



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

and

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 13, 2025 at 9:00 a.m.

State Capitol, Conference Room 016

By

Ronald G. Johnson

Deputy Chief Judge, Criminal Administrative Judge

Circuit Court of the First Circuit

Michelle K. Laubach

District Court Judge of the Third Circuit

Ken Shimosono

District Court Judge of the First Circuit

Bill No. and Title: Senate Bill No. 955, Relating to Fitness to Proceed.

Purpose: Clarifies the term of commitment for a defendant being held at a hospital or mental health facility for a fitness-to-proceed examination. Clarifies who may serve as a qualified examiner. Reduces from 3 to 2 the number of qualified examiners required for a fitness-to-proceed examination in a felony case, unless the examiners disagree on the defendant's fitness. Establishes the rate of compensation for conducting the examinations. Establishes a reduced penalty, except in certain circumstances, for a person who commits the offense of escape in the



Senate Bill No. 955, Relating to Fitness to Proceed.
Senate Committee on Health and Human Services
Senate Committee on Judiciary
February 13, 2025
Page 2

second degree while in the custody of the Director of Health under section 704-421(1), Hawai‘i Revised Statutes.

Judiciary's Position:

The Judiciary appreciates this bill’s focus on improving the system, but must respectfully **oppose portions** of the proposed legislation. We also note that the Judicial Council is currently conducting the Penal Code Review as required by Act 245 (2024). Included in the Penal Code Review, as one of the subcommittees, is a committee conducting a comprehensive review of Chapter 704 where all of these provisions may be more thoroughly addressed. The report from the advisory committee will be presented to the Legislature at the end of this year. Therefore, the Judiciary respectfully requests that this bill be deferred until the next legislative session.

Should the proposed legislation not be deferred, the Judiciary provides the following testimony regarding the provisions of the bill.

Criminal prosecutions cannot proceed against a person if the person, “as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against [them] or to assist in [their] own defense” for so long as that incapacity endures. Hawai‘i Revised Statute Section (“HRS §”) 704-403. Whenever there is reason to believe that such incapacity exists, the court suspends the criminal prosecution and orders an examination of the defendant to determine if they have the capacity to understand the proceedings against them and the capacity to assist in their own defense.¹ HRS § 704-404. For felony cases, the court appoints three examiners, two of which are appointed from a list of certified private examiners as determined by the director of health and the third is a certified examiner from within the Department of Health, to conduct an examination in accordance with section 704-404(5). For non-violent petty misdemeanor cases, under section 704-404(2)(a) as established by Act 26 (2020), the court will appoint a single examiner to conduct an examination to determine if the defendant should be placed in the criminal justice diversion program outlined in section 704-421. These section 704-404(2)(a) examinations are conducted in an expedited manner and are not the complete examination outlined in sections 704-404(5). In all other petty misdemeanor cases and in misdemeanor cases, the court appoints a single examiner from within the Department of Health (“DOH”), to conduct an examination in accordance with sections 704-404(5). Finally, in the court’s discretion, when necessary, the court can order that the defendant be “committed to a hospital or other suitable facility for the purposes of this examination.” HRS § 704-404(2).

A. Examinations Conducted While Committed Under Hawai‘i Revised Statute Section 704-404(2)

¹ If the defendant possesses both of these capacities, then they are “fit to proceed.” If they lack one or both, then they are “unfit to proceed” and are either committed to the custody of the director of health or released on conditions pursuant to section 704-406(1).



Senate Bill No. 955, Relating to Fitness to Proceed.
Senate Committee on Health and Human Services
Senate Committee on Judiciary
February 13, 2025
Page 3

Section 2 of the bill proposes to “reduce overcrowding at hospitals and mental health facilities by clarifying the term of a defendant’s commitment to a hospital or facility for purposes of a fitness-to-proceed examination.” The bill seeks to accomplish this goal by requiring the court to hold a “status” hearing within fourteen days of any such necessary commitment under HRS § 704-404(2) and, if the defendant remains committed after that fourteen-day hearing, requiring a further “status” hearing thirty days after commitment. *See* SB955, page 4, lines 15-21 and page 5, lines 1-6. The bill mandates these additional hearings in all cases where a defendant is committed pending the examination and does not require any assertion of a change in the circumstances which necessitated the commitment nor does it require any supporting evidence be presented to the court to seek the court’s reconsideration of its prior ruling.

The Judiciary **opposes** this portion of the bill as it unnecessarily requires multiple mandatory and wasteful hearings in all section 704-404(2) cases including those where there has been absolutely no change in circumstances that would alter the necessity finding made by the court. If such hearings are mandated, the court would certainly require the treating physician at DOH to submit a written report at least two days prior to each hearing opining on whether it is still necessary for defendant to be committed to the hospital and the basis for the opinion. The reason for the report would be two-fold: (1) to assist the court in making a decision on defendant's placement; and (2) to assist counsel for the State and defendant in determining whether to request a contested hearing on the issue of placement.² Given the current caseload and limited resources, this could create an additional burden on the treating physicians and the DOH and will require additional time and resources of the Judiciary, the prosecution, and the defense even in those cases where the report from the DOH doctor recommends that the defendant remain in DOH custody.

In reality, DOH **already has the ability to challenge a section 704-404(2) commitment and to seek review of a court’s finding of necessity in any particular case.** Indeed, until the first quarter of 2021, DOH routinely appeared and stated their position at all hearings on motions to transfer a defendant’s custody to the director of health under section 704-404(2). DOH also, until the first quarter of 2021, routinely filed their own motions to transfer a defendant back to the custody of the Department of Corrections and Rehabilitation³ when, after they took custody of a defendant, they determined that, in their view, the commitment under section 704-404(2) was not necessary.⁴ There is absolutely nothing stopping the director of health from filing these motions again in any and all cases where they believe that a defendant being held under section 704-404(2) does not require hospital level care. A blanket provision requiring multiple hearings on every section 704-404 case—hearings where the defendant, the deputy prosecuting attorney,

² In cases where a party requests a contested hearing on the issue of placement, the treating physician and any other relevant hospital staff (case manager, social worker, etc.) would be required to be present in person to testify at court.

³ The entity at that time was known as the Department of Public Safety.

⁴ These positions and motions were filed by the Department of the Attorney General on behalf of the director of health and were heard as soon as practicable but generally within one week.



defense counsel, the deputy attorney general, and the court must take time and appear, and where DOH must submit written reports to the court—would be a waste of resources in light of the availability of such a targeted review.

B. Reducing the Examiners from Three to Two for Felony Offenses

Section 2 of the bill also proposes to “reduce from three to two the number of qualified examiners required for a fitness-to-proceed examination in a felony case, unless the examiners disagree on the defendant’s fitness.” The Judiciary **strenuously opposes** this amendment. The reduction of the evaluation for fitness to proceed from a three-panel to a two-panel will have little to no effect on the time it takes to conduct an initial determination of a defendant’s fitness to proceed in felony cases. In fact, it will double the amount of time it takes for the court to make a determination of fitness in a significant number of cases. The Judiciary’s experience with the felony three-panel examinations has been that a vast majority of the cases come back with a two to one split in the opinions of the examiners with respect to the defendant’s fitness to proceed. The examination reports typically take between 12 – 16 and in some cases 24 weeks. This bill would require an additional 12 – 16 weeks after the initial three to fourth month period in order to obtain the third report when the initial reports are not in agreement.

In addition, all of these reports, especially on fitness issues, must be viewed by the court in relation to when the defendant was evaluated. Waiting an additional 12 – 16 weeks will enable parties to argue that the first two examination reports are “stale” with respect to a defendant’s current fitness thus leaving the parties to argue and the court to determine which report(s) to give more weight. It may also lead to the court having to order a re-evaluation by the first two doctors, thus extending the time even further.⁵ While reducing the amount of private examiners required to conduct a section 704-404 examination may in the short term alleviate the strain on the limited number of examiners the department of health currently has on the certified list, in the long term it will increase the time necessary for the determinations of fitness to be made and ultimately may require more court ordered examinations.⁶

⁵ Moreover, as under the present law, when there is a split in the three examiner’s conclusions as to fitness, the parties can request a contested hearing before the court on the issue of fitness or the parties may stipulate to the reports and allow the court to determine the issue based solely on the three reports. Requesting a contested hearing after the completion of the third examination under this bill will further extend the time needed to ultimately determine a defendant’s fitness to proceed.

⁶ It should also be noted that the proposed revision is only being made in section 704-404. Sections 704-406, 704-407.5, 704-411, and 704-414 all require a three-panel examination with the only exception being a section 704-406(3) examination in “B” and “C” felony cases where the defendant is not concurrently seeking a section 704-407.5 examination. Therefore, in instances where a defendant seeks an examination on both fitness and penal responsibility, an examination for conditional release or discharge from conditional release, or when there is reason to believe a defendant has regained fitness or is unlikely to ever regain fitness, a three-panel would still be required.



Senate Bill No. 955, Relating to Fitness to Proceed.
Senate Committee on Health and Human Services
Senate Committee on Judiciary
February 13, 2025
Page 5

C. Proposed Changes to HRS § 704-404(2)(a) to Include all Non-Violent Crimes in Act 26's Expedited Examination and to HRS § 704-404(2)(b) to Remove all Non-Felony and Violent Petty Misdemeanors From the One-Panel Examinations

Although not referenced in Section 1, which sets forth the purposes of the proposed legislation, Section 2 also seeks amendments to sections 704-404(2)(a) and (2)(b) that are confusing and would likely **increase** the number of defendants that would be committed to the custody of the director of health under section 704-406. While it is unclear what the ultimate purpose of the revisions are, the Judiciary **opposes** these revisions as they will needlessly **increase** the number of defendants transferred to the custody of the director of health and takes away the court's authority to order a one-panel fitness examination for any defendant charged with petty misdemeanors or misdemeanor offenses involving violence or attempted violence.

First, the proposed revision in section 704-404(2)(a) will apply the expedited evaluation procedure (a procedure that was created and outlined in Act 26 (2020) specifically for defendants charged with non-violent petty misdemeanor that were to be diverted from the criminal justice system) to all defendants charged with non-violent crimes. This includes both felony and misdemeanor offenders. The intent of the two-day evaluation was to determine if a non-violent petty misdemeanor defendant was a viable candidate for a diversion program by determining if the defendant's fitness to proceed was an outstanding issue in the case. If it was, then rather than requiring the defendant to wait for a full examination, which could take 30 to 90 days, the defendant would be diverted under section 704-421. The expedited evaluation was not intended to be a full examination and was explicitly excluded from the provisions of section 704-404(5). **Among other things, the expedited fitness evaluations for petty misdemeanors under section 704-404(2)(a) do not consider a defendant's medical diagnosis or their previous medical records, nor provide an opinion on the defendant's dangerousness.** Instead, the expedited evaluation is limited to an opinion of whether the defendant is clearly fit to proceed, clearly unfit to proceed, or an opinion that their fitness to proceed remains an outstanding issue. Expanding this provision to all other non-violent crimes will have the unintended effect of causing all individuals to be transferred to the custody of the director of health unless the defendant is clearly fit to proceed as the court will not have any information on the defendant's actual diagnosis or their dangerousness.⁷ This will include all such individuals who are suffering the "temporary" effects of illicit drug use as opposed to a mental illness, i.e. those individuals who, if seen by the examiner a week or two later, would present as fit to proceed. This could increase – rather than decrease – the census at the Hawai'i State Hospital with individuals who could have otherwise remained either in the custody of the Department of Corrections and Rehabilitation or on release status pending the return of the normal one- or three-panel

⁷ Section 704-406(1) requires a defendant to be committed to the custody of the director of health if the defendant lacks fitness to proceed. The only exception is when a court "is satisfied that the defendant may be released on conditions without danger to the defendant or to another or risk of substantial danger to property of others" then they shall release the defendant on conditions. HRS § 704-406(1).



Senate Bill No. 955, Relating to Fitness to Proceed.
Senate Committee on Health and Human Services
Senate Committee on Judiciary
February 13, 2025
Page 6

examination as to fitness (and, in some cases, penal responsibility). Section 704-404(2)(a) should remain for those individuals who may be eligible for diversion from the criminal justice system under section 704-421.

The proposed amendment to section 704-404(2)(b) has the unintended consequence of removing all those individuals charged with misdemeanors or petty misdemeanors involving violence or attempted violence from the provisions of section 704-404 altogether. The Judiciary **opposes** these provisions. As noted, the proposed revision to section 704-404(2)(a) would require the expedited evaluation process to be applied to all defendants charged with non-violent petty misdemeanors, non-violent misdemeanors, and non-violent felonies. The proposed amendment to section 704-404(2)(b) then states that when the court-based certified examiner is not available under subsection (a), the court will appoint one examiner to conduct a one-panel examination. However, under this bill, subsection (a) only applies to defendants charged with non-violent “crimes.” By removing the “[i]n all other nonfelony cases” provision the bill leaves no provisions for all those charged with violent petty misdemeanors and violent misdemeanors and creates a conflict with the provisions of section 704-404(2)(c).⁸ Section 704-404(2)(b) should remain for defendants charged with offenses not covered under sections 704-404(a) or 704-404(c) and whenever a court-based certified examiner is not available in non-violent petty misdemeanor cases.

D. The Addition of Advanced Practice Registered Nurse Specializing in Psychiatry

Section 2 of the proposed legislation proposes to “[i]ncrease the number of available private examiners and expedite examination reports” by adding advanced practice registered nurses specializing in psychiatry to the examiners that may be certified by DOH to conduct the examinations required under section 704-404. The Judiciary takes **no position** on this provision and **defers** to DOH as to the qualifications of, and abilities required of, advanced practice registered nurses specializing in psychiatry to conduct, prepare reports of, and testify regarding the examinations required under Chapter 704. However, if DOH has no objection and determines they are qualified and can be certified, the Judiciary does note and would object to the fact that the proposed change to include advanced practice registered nurses specializing in psychiatry is only proposed in section 704-404. We would respectfully request that, if this change is desired, that it be made to other applicable sections of Chapter 704. When appointing examiners in Chapter 704 cases, the Judiciary, the State, and the defense primarily seek consistency in the evaluations by appointing the same examiners for the defendant whenever possible. In that regard, the same three examiners would be appointed for a defendant for all examinations subsequently ordered, including under sections 704-404, 704-406, 704-407.5, 704-

⁸ As written the proposed section 704-404(2)(b) would require a one-panel in all non-violent felony cases where a court-based certified examiner was not available. Section 704-404(2)(c) requires the court to appoint a three-panel in all felony cases.



Senate Bill No. 955, Relating to Fitness to Proceed.
Senate Committee on Health and Human Services
Senate Committee on Judiciary
February 13, 2025
Page 7

411, and 704-414. Without the same change to those provisions, the court would be unable to appoint the same examiners in each of those instances.

E. Rate of Compensation Paid by the State

Section 2 also seeks to “[i]ncrease the number of available private examiners and expedite examinations reports by increasing compensation for” and codifying the amount to be paid by the State for the private certified examiners appointed in felony cases. The Judiciary has **no objection to the intent** of the revisions outlined for section 704-404(11) as they are similar to Senate Bill 264 SD1 and its companion House Bill 397 that were part of the Judiciary’s legislative package. However the Judiciary respectfully requests that these revisions be deferred in favor of Senate Bill 264 SD1 and its companion. Those bills make clear that the Judiciary is the entity making the payments to the private examiners and specifically outlines what that compensation covers with respect to the appointment.

F. Reducing Penalties When a Defendant Commits Escape in the Second Degree While Committed Under Section 704-421

Finally, Section 3 reduces the felony offense of escape in the second degree to a petty misdemeanor if committed by a defendant who was in the custody of the director of health pursuant to section 704-421. The Judiciary has **no objection** to the proposed revisions to section 710-1021(2) and (3) proposed under Section 3 of the bill. These provisions were in the original bill that ultimately was enacted into law by Act 26 (2020) and were supported by the Judiciary at that time. The Judiciary is hopeful that these provisions will also be included in the legislative recommendations from the Penal Code Review later this year.

Thank you for the opportunity to testify.

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

APPELLATE DIVISION
TEL. No. (808) 586-2080

DISTRICT COURT DIVISION
TEL. No. (808) 586-2100

FAMILY COURT DIVISION
TEL. No. (808) 586-2300

FELONY DIVISION
TEL. No. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAII 96720
TEL. No. (808) 974-4571
FAX No. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. No. (808) 327-4650
FAX No. (808) 327-4651

KAUA'I OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAII 96766
TEL. No. (808) 241-7128
FAX No. (808) 274-3422

MAU'I OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. No. (808) 984-5018
FAX No. (808) 984-5022

Testimony of the Office of the Public Defender to Senate Committees on Health and Human Services and Judiciary re:

SB 955 Relating to Fitness to Proceed

Chairs: Senator Joy San Buenaventura and Senator Karl Rhoads, Vice Chairs: Senator Henry Aquino and Senator Mike Gabbard and Members of the Committees:

The Office of the Public Defender respectfully **supports in part and opposes in part SB 955** for the following reasons:

The OPD supports the purpose of SB 955 and feels that in great part it will aid in the goals set out in the preamble. The OPD does however, oppose the proposed changes to HRS sub-section 704-404 (2)(c), which would reduce the number of examiners from 3 to 2 in felony cases unless there is a disagreement between the first two examiners. The OPD feels that this will lead to unnecessary delays in answering a threshold question in any 704 related criminal case and would lead to longer placements at the State Hospital or other facilities. Since SB 955 would also increase the number of available examiners with the inclusion of advanced practice registered nurses there should be no need to limit the number of examiners in felony cases.

The OPD greatly applauds the proposed amendments to subsection (11) which would increase compensation for panel members, and most importantly would compensate panel members for their in-court preparation and testimony. Furthermore, the OPD supports the proposed changes to HRS section 710-1021 (Escape in the Second Degree), as these types of cases usually involve those suffering from mental health issues and a diminished capacity to appreciate the wrongfulness of their conduct.

Thank you for the opportunity to comment upon this measure.

JOSH GREEN, M.D.
GOVERNOR



MARK PATTERSON
CHAIR

CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

COMMISSIONERS
HON. R. MARK BROWNING (ret.)

HON. RONALD IBARRA (ret.)

MARTHA TORNEY

HON. MICHAEL A. TOWN (ret.)

STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
E HUIKALA A MA'EMA'E NŌ
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable Joy A. San Buenaventura, Chair
The Honorable Henry J.C. Aquino, Vice Chair
Senate Committee on Health and Human Services

The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: Senate Bill 955, Relating to Fitness to Proceed
Hearing: Thursday, February 13, 2025; 9:00 a.m.
State Capitol, Room 016

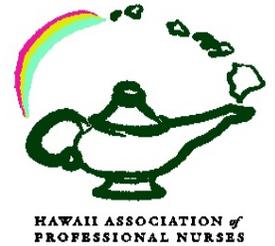
Chair San Buenaventura, Chair Rhoads, Vice Chair Aquino, Vice Chair Gabbard, and Members of the Committees:

The Hawaii Correctional System Oversight Commission (HCSOC) **submits comments** on Senate Bill 955, Relating to Fitness to Proceed, which clarifies the term of commitment for a defendant being held at a hospital or mental health facility for a fitness-to-proceed examination, clarifies who may serve as a qualified examiner, and reduces from 3 to 2 the number of qualified examiners required for a fitness-to-proceed examination in a felony case.

Fitness to proceed examinations are imperative to ensure defendants can participate in their case with full capacity. Individuals who are waiting for their examinations are often times waiting in the jails, and extended waiting periods is detrimental to their mental health. The Commission supports the intent of this bill to expedite the process, and lower overcrowding in not only the state hospitals, but also the jails, by clarifying types of individuals who may serve as a qualified examiner. It seems reasonable that healthcare professionals from within the Department of Health who are psychiatrists, advanced practice registered nurses specializing in psychiatry, or licensed psychologists could conduct these exams. It also seems reasonable that two qualified examiners can examine and report upon the individual's fitness to proceed given that in a disagreement, a third will be appointed to review.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

Hawai'i Association of Professional Nurses (HAPN)



To: The Honorable Senator Joy San Buenaventura, Chair of the Senate Committee on Health and Human Services; The Honorable Senator Karl Rhoads, Chair of the Senate Committee on Judiciary

From: Hawaii Association of Professional Nurses (HAPN)

Subject: In Support of SB955 – Relating to Fitness to Proceed

Hearing: February 13, 2025, 9:00 AM

Aloha Senator San Buenaventura, Chair; Senator Aquino, Vice Chair; Senator Rhoads, Chair, Senator Gabbard, Vice Chair and Committee Members,

On behalf of the Hawaii Association of Professional Nurses (HAPN), we appreciate the opportunity to submit this testimony in support of SB955, which seeks to enhance the efficiency of fitness-to-proceed evaluations and reduce the burden on Hawaii's healthcare and judicial systems.

As advanced practice nurses who serve as primary care and mental healthcare providers across Hawaii, we recognize the importance of ensuring timely and thorough forensic mental health assessments while also preserving healthcare resources. This bill proposes meaningful reforms that align with best practices in forensic mental health and help alleviate systemic inefficiencies. Specifically, we support the provisions that:

1. Reduce overcrowding at hospitals and mental health facilities by clarifying the timeline for defendant commitment during a fitness-to-proceed evaluation.
2. Increase the number of qualified examiners and improve the timeliness of reports by expanding eligibility and compensation for private examiners, including advanced practice registered nurses (APRNs) specializing in psychiatry.
3. Streamline the evaluation process in felony cases by reducing the required number of examiners from three to two, unless there is a disagreement in findings.
4. Ensure fair and proportional penalties by adjusting the classification of escape offenses for individuals undergoing mental health evaluations.

APRNs specializing in psychiatry play a vital role in mental health care in Hawaii, particularly in underserved communities. Expanding the examiner pool to include qualified APRNs will expedite evaluations while maintaining high standards of forensic assessment. By addressing inefficiencies in the current process, this legislation also prevents unnecessary delays in the judicial system and reduces strain on Hawaii's mental health facilities.

We urge your committees to pass SB955 to improve access to timely forensic mental health evaluations and enhance the overall effectiveness of our criminal justice system.

Thank you for the opportunity to testify. We appreciate your commitment to improving Hawaii's healthcare and judicial processes.

Respectfully submitted,

Dr. Jeremy Creekmore, APRN
President, HAPN

SB-955

Submitted on: 2/11/2025 10:51:42 AM

Testimony for HHS on 2/13/2025 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--------------|--------------------|------------------------|
| Ellen Awai | Individual | Support | Written Testimony Only |

Comments:

I stand in support of SB955 Fitness to Proceed. Three doctors are not necessary and two should be sufficient and perhaps one male and one female because they view things differently. Psychologists seem to see things not under the pressure of giving drugs that pharmaceuticals may have influenced on them, and view a patient and more on their actions, speech, and thoughts. Understanding the recent trauma events of the person can help them understand the stress the individual face as to why they needed to commit the crime and had what most term a "nervous breakdown". With the recent events that happened with fireworks, of course there is varying degrees of memory because each person would know that they were involved in an illegal event and to have doctors who are not local take care of them can be cruel to the person under extreme pain because of the physicians biases on what he determines to be right and wrong.

Being pressured by family members that a man cannot watch a girl, I was concerned about how my daughter would be treated by my husband. But each person views violence differently, especially when you haven't really experienced much and everyone else is telling you that a person is "crazy." Sometimes your own family has past issues in childhood or are doing things that would be conceived as criminal acts and don't want to be caught in their lies. Even in my senior community with racial differences, I see people believe that their reality of what is the truth is correct and not knowing the law will try to get others to believe them, although all their actions are wrong, but will continue them just to challenge the system or the management.

Being a physician is like being a judge to determine prior to the courts" ruling if the person knew what he was doing or delusional, but how would you know how a person was raised from childhood. I believe that cutting out a fitness to proceed examination would cut out the double jeopardy of being tried twice for the same crime. A person just needs to recuperate, breathe to clear his head, eat, sleep, and drink water to retain himself/herself and speak of why he really committed the crime or if he/she is ready to accuse someone else who was there. Law enforcement has already gathered the evidence and with DNA testing can already prove if a person did a crime. This is too much of a process not necessary when a person reacts on their emotions at the time of the criminal event.

My first arrest for criminal property damage, picking grass and leaves at Maui Memorial because I was refused treatment for a head concussion in Maui Emergency. They refused three times to take my HMSA insurance, where I was a claims examiner and had gone through induced mania by a drug, Prozac, prescribed by their own Biodyne doctor, Dr. Purtzer. I was handcuffed by

a black security guard who thought I was calling him names, when I tried to explain that my hands were painful and black, but he had my hands behind my back. I was then sent to jail, laughed at by several local policemen, when a haole guard in white took my fingerprints over and over. My hands were still in pain, when they had turned black while picking the leaves. I tried to kick the haole guard and may have been charged with assault on a police officer.

In prison MCCC, I was beaten up by 6 women banging my head to a bed post in an overcrowded cell, where the adjoining cell had only one person, who was treated like a queen. I was allowed to get up from the floor where I had been sleeping, when a guard came and let me recuperate from my injuries in the recreation room by standing on my head and doing summersaults. I thought this could prevent swelling and I healed myself by morning light. I felt fine and was able to shoot pool by myself and incredibly hit all the balls into the pockets in numerical sequence! Something I could never do before! Later that day, I was sent to court, flown to Honolulu and entered Hawaii State Hospital, since the judge said I was a Honolulu girl. I remained there for several months waiting for 3 doctors to determine if I was fit to proceed, and flown to Maui a couple times for court proceedings.

I was finally released, but court ordered to attend Diamond Head Life Skills, where I attended the program from about 1992-2002 and had volunteer positions at Bishop Museum, the Department of Health's SHIP program, Straub Clinic's fileroom for 8 years, Legal Aid Society of Hawaii for 2 years, then became part of Hawaii Disability Rights Center board and had to leave LASH because of a conflict of interest. Our program was so prosperous earning money to travel to all islands, Disneyland, and Vegas in 2000 and worked with people like Carol Kai and her Great Aloha Run by stuffing runners' packets, and many others just by stuffing envelopes at a few cents each. I lead our group by doing the accounting and many duties that staff performed while paid. Another Haleiwa program also prosperous, but the state wanted the Clubhouse Model from New York and even brought in a director who was placed in so many positions above more qualified local people, including myself.

During my stay at HSH, my husband visited during Christmas and was confused and also by my behavior that he eventually placed a TRO on me and filed for divorce. The programs had changed me just by listening to music and the Occupational Therapist had me writing down words to songs and being able to relax. Eventually we had Christmas parties with live groups, and not just bored and angry, waiting to see a doctor, being bullied by staff from other states and countries or being in support groups lead by doctors. We went on group outings and even visited well-known events during the holidays, we were being treated like humans again!

Later my husband was sent a \$3000 bill from the HSH, but because he started divorce proceedings, he was not responsible to pay it and neither was I. It took a while to repair the relationship with him and my daughter, who was told that I had abandoned her. It's difficult trying to get him to recollect anything that happened since we were married, so that I can understand what really happened. We can now only communicate through our daughter.

My two sisters still living today have finally realized that I was not mentally ill and neither was my brother, Joe who died for no good cause but being a male with hormones in his early 20s. He ended up homeless, covered with purple cysts from the lithium medications given to both of us

and eventually sent to Diamond Head as well, where we both saw the same Dr. Akaka. But seeing him a few years ago, after he retired, he told me to continue to take the medications for the rest of my life! He still hadn't learned that traumatic events in a person's life causes the chemical imbalance in our brains and felt that medications worked! Last year at an annual NAMI event, Dr. Akaka a national representative, along with several others that manipulated individuals diagnosed with a mental health issue, when NAMI's national president Gillison expressed how Hawaii can be the 51st state in mental health in 2000, when there's only 50 stars in the flag!

Everyone needs to stop judging people with labels and see them as a unique individual. As you can see it took me 35 years to realized through alternative therapies that I did not have a mental health issue but a physical thyroid problem and was cured with supplements. But my life and that of my family, including all those living in Hawaii, has been damaged through the decades of lies told to us and we should seek reparation damages for losing family members, unnecessary hospitalizations, imprisonment, and discrimination of those who colonized our islands and by those who didn't want to learn to read, write, and comprehend English or learn our laws here in the islands! Mahalo for letting me share my rather lengthy testimony!

SB-955

Submitted on: 2/10/2025 12:06:44 PM

Testimony for HHS on 2/13/2025 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|----------------|
| Dave Fields | Individual | Oppose | In Person |

Comments:

I appreciate the Committee’s dedication to improving how courts and mental health facilities handle the fitness-to-proceed process. I write to share insights from my time at Hawai‘i State Hospital and explain why, while I respect the bill’s intent, there should be robust oversight measures to ensure its successful implementation.

During my service at Hawai‘i State Hospital, I experienced firsthand how administrative decisions and leadership culture directly affect patient treatment, staff morale, and overall facility capacity. Despite demonstrating strong clinical performance, I found myself in situations where leadership provided little clarity or inconsistent support, making it difficult to maintain stable workflows and patient care. When I read the proposed changes in this measure—most notably, the aim to reduce overcrowding and expedite examination procedures—I recognize how they might, in theory, bring immediate relief to both hospitals and the justice system. Yet I also know from experience that without strong administrative follow-through, good legislative reforms can falter.

In this bill, clarifying how long a defendant may be held for an examination and establishing specific timelines for hearings could help defendants avoid unnecessarily prolonged stays in mental health facilities. Doing so might also reduce strain on staff by bringing more predictability to admissions and discharges. At the same time, however, any additional commitments or extended holding periods must be matched with sound hospital leadership that plans effectively for fluctuating patient numbers. In my observations, leadership missteps at the Hospital led to confusion in applying otherwise straightforward policies, which in turn caused undue stress for both patients and providers.

I also note the provision allowing two rather than three qualified examiners to assess a defendant in a felony case, unless those examiners disagree. Simplifying the process is admirable, particularly if it speeds up evaluations and ensures individuals do not remain in custody longer than necessary. But this shift may increase the amount of evaluation work for already overextended psychiatrists, psychologists, and advanced practice nurses. Without a clear framework for distributing these new workloads, we risk compounding the staff burnout I have personally witnessed.

I trust that the Committee’s goal is to minimize unintended consequences. Therefore, I respectfully suggest that the Legislature or relevant departments incorporate a system to track the effects of these changes over time. Hawai‘i State Hospital or the Department of Health could issue periodic reports detailing how many defendants are admitted for evaluation, the average

length of stay, and how many staff are tasked with these examinations. In my experience, the mere act of publicly reporting such data can improve transparency and encourage leadership to address problems before they become crises.

Additionally, I believe involving frontline clinicians—especially those who have navigated past challenges at the Hospital—in shaping any internal protocols would help operationalize the law more smoothly. This might mean establishing a small working group or advisory council that includes voices from various ranks, ensuring the legislation’s intent does not falter when confronted with day-to-day administrative realities.

Overall, the idea behind this bill is commendable: reduce unnecessary overcrowding, clarify the commitment process, and ensure fairness for those in need of mental health assessments. However, my background at Hawai‘i State Hospital tells me that strong leadership and a well-defined plan are essential for real progress. The best laws still need consistent oversight and responsive management. With additional measures to track outcomes and involve frontline staff in shaping procedures, I believe these reforms could achieve their rightful impact—helping patients, clinicians, and the broader criminal justice system alike.

Thank you for your consideration of these points and for allowing me to testify on S.B. 955. My experience at Hawai‘i State Hospital has shown me that meaningful improvements are indeed possible, provided we pair legislative reforms with robust oversight and an unwavering commitment to responsible leadership. I stand ready to answer any questions or provide further information as needed.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov



**Testimony in SUPPORT of SB 955
RELATING TO FITNESS TO PROCEED**

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATOR HENRY J.C. AQUINO, VICE CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

SENATOR KARL RHOADS, CHAIR
SENATOR MIKE GABBARD, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date and Time: February 13, 2025, 9:00 a.m. Location: Room 016 and Videoconference

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department of Health (“Department”) supports the intent of the bill
3 and provides the following comments on this measure.

4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
5 testimony on behalf of the Department.

6 The Department appreciates the efforts of the legislature in supporting and bringing
7 forth new approaches to solving the issues surrounding mental health and the justice system.

8 SB 955 proposes modifications to the Chapter 704 evaluation process in an effort to
9 expedite cases through the legal system and reduce overcrowding at hospitals and mental
10 health facilities. The measure also proposes to reduce penalties, with exceptions, for a person
11 who commits the offense of escape in the second degree while in the custody of the Director
12 under HRS 704-421(1).

13 Currently, HRS 704-421 allows for the evaluation of competency for individuals charged
14 with a non-violent, petty misdemeanor, to occur within a two-day turnaround. In order to
15 meet the time requirement of statute, examiners are forced in those expedited cases to

1 conduct evaluations relying heavily on interview and limited collateral data as sources of
2 information. The Department is concerned that this measure proposes to expand the practice
3 of conducting non-standard evaluations by including all offenses not involving violence.

4 The Department also highlights findings from FY 24 data. A review of the current “Act
5 87” process shows that approximately 95% of defendants evaluated within the two-day
6 turnaround are opined unfit (many are intoxicated on alcohol and/or drugs) , found such by the
7 courts and sent to the state hospital. The expansion of eligible individuals to the program as
8 proposed under 404 (2) without the explicit provisions defined in 704-421 would result in
9 increasing the census at the Hawaii State Hospital, rather than having the intended effect of
10 reducing overcrowding. The Department recommends that non-violent misdemeanors be
11 added to the charges eligible under 704-421. Additionally, the Department recommends the
12 turnaround time extend from two to five days for the initial exam as it takes 48 hours for the
13 body to eliminate the alcohol and or drugs.

14 In various sections of the measure, advanced practice registered nurses (APRNs) are
15 proposed as a profession to conduct forensic evaluations. As with all clinicians, APRNs would be
16 expected to be forensically trained before conducting evaluations.

17 The proposed measure attempts to expedite legal cases by reducing, from three to two,
18 the number of qualified examiners appointed to provide an expert opinion on competency. The
19 reduction in required examiners could help to address delays associated with the chapter 704
20 process. At present, it takes several weeks for the completion of scheduled panel examinations
21 and associated hearings. In the event of a disagreement of findings by two examiners, the
22 court, in this measure, is required to appoint a third examiner, which would reset the hearings
23 process and postpone judgement by several additional weeks. Thus, the Department
24 recommends the measure be amended from a “third examiner shall be appointed” when a
25 disagreement occurs to “a third examiner may be appointed.”

1 The Department also suggests that in addition to Fitness Evaluations being conducted by
2 a two panel, that Penal Responsibility, dangerousness and Conditional Release exams also be
3 considered for two panel.

4 Finally, the measure proposes that the court shall hold additional hearings no later than
5 fourteen days and on the thirtieth day after a defendant is committed to determine whether it
6 is necessary to continue commitment. While the Department appreciates that the intent is to
7 reduce the time a defendant may be held at the Hawaii State Hospital, there already exists a
8 mechanism through the courts to expedite hearings and for a defendant's custody status to be
9 reviewed. The proposed change would also inadvertently add to the workload of the state
10 hospital by creating additional letters required to the court and hearings to attend.

11 Given the importance of accurate and expedient court proceedings, the Department
12 believes it prudent to conduct a pilot of these changes and respectfully requests a sunset date
13 for Section 2, #1 of this bill.

14 **Offered Amendments:**

15 The Department requests that page 3, line 19 be amended from a "third examiner shall
16 be appointed" to "a third examiner may be appointed."

17 The Department respectfully requests that the court hold status hearings required
18 under 704-404 at Hawaii State Hospital no less than once a week by amending page 5, line 4 to
19 read as follows: "to commit the defendant; provided further that the court shall hold status
20 hearings on the Hawaii State Hospital grounds no less than once a calendar week."

21 The Department requests a sunset date of December 31, 2026 for proposed
22 modifications in Section 2, #1.

23 Thank you for the opportunity to testify.