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## A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEEDINGS.

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

1           SECTION 1. The legislature finds that Hawaii's system for  
2 evaluating whether a criminal defendant is mentally competent to  
3 stand trial and be held responsible for criminal acts is  
4 problematic and inefficient. Statutory provisions regarding a  
5 defendant's capacity to appreciate the wrongfulness of the  
6 defendant's conduct or to conform that conduct to the  
7 requirements of law are outdated and imprecise. Other  
8 provisions require that three qualified mental health  
9 professionals examine whether a felony defendant is mentally fit  
10 to proceed to trial, although other states provide courts with  
11 the discretion to require one or more examiners. Requiring  
12 three examiners in all felony fitness examinations has  
13 contributed to delays in both mental fitness determinations and  
14 the transfer of some defendants from penal custody to more  
15 appropriate hospitalization.

16           Accordingly, the purpose of this Act is to:



- 1           (1) Revise statutory provisions regarding a defendant's
- 2           mental capacity by utilizing updated language from an
- 3           applicable federal statute, 18 United States Code
- 4           section 17;
- 5           (2) Provide courts with more flexibility regarding the
- 6           number of professionals that are required to complete
- 7           the mental health evaluation of a felony defendant;
- 8           (3) Alleviate delays in defendant mental competency
- 9           determinations; and
- 10          (4) Protect the procedural due process rights of
- 11          defendants.

12           SECTION 2. Section 704-400, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "§704-400 Physical or mental disease, disorder, or defect  
15 excluding penal responsibility[-]; affirmative defense. (1) [A  
16 ~~person is not responsible, under this Code, for conduct if at~~  
17 ~~the time of the conduct as a result of physical or mental~~  
18 ~~disease, disorder, or defect the person lacks substantial~~  
19 ~~capacity either to appreciate the wrongfulness of the person's~~  
20 ~~conduct or to conform the person's conduct to the requirements~~  
21 ~~of law.] It is an affirmative defense to a prosecution under~~



1 this Code that, at the time of the commission of the acts  
2 constituting the offense, the defendant, as a result of a  
3 physical or mental disease, disorder, or defect, was unable to  
4 appreciate the nature and quality of the wrongfulness of those  
5 acts. Physical or mental disease, disorder, or defect does not  
6 otherwise constitute a defense.

7 (2) ~~[As used in this chapter, the terms "physical or~~  
8 ~~mental disease, disorder, or defect" do not include an~~  
9 ~~abnormality manifested only by repeated penal or otherwise anti-~~  
10 ~~social conduct.] The defendant has the burden of proving the~~  
11 defense of physical or mental disease, disorder, or defect by  
12 clear and convincing evidence."

13 SECTION 3. Section 704-402, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§704-402 Physical or mental disease, disorder, or defect  
16 excluding responsibility ~~[is an affirmative defense]~~; form of  
17 verdict and judgment when finding of irresponsibility is made.

18 ~~[(1) Physical or mental disease, disorder, or defect excluding~~  
19 ~~responsibility is an affirmative defense.~~

20 ~~-(2)] (1) When the defense provided for by ~~[subsection (1)]~~~~

21 section 704-400 is submitted to a jury, the court shall, if



1 requested by the defendant, instruct the jury as to the  
2 consequences to the defendant of an acquittal on the ground of  
3 physical or mental disease, disorder, or defect excluding  
4 responsibility.

5 ~~[-3-]~~ (2) When the defendant is acquitted on the ground of  
6 physical or mental disease, disorder, or defect excluding  
7 responsibility, the verdict and the judgment shall so state."

8 SECTION 4. Section 704-404, Hawaii Revised Statutes, is  
9 amended by amending subsection (2) to read as follows:

10 "(2) Upon suspension of further proceedings in the  
11 prosecution, the court shall appoint [~~three qualified examiners~~  
12 ~~in felony cases and one qualified examiner in nonfelony cases~~]  
13 to examine and report upon the physical and mental condition of  
14 the defendant ~~[-]~~:

15 (a) In felony cases:

16 (i) When conducting an evaluation for criminal  
17 responsibility, three qualified examiners; or

18 (ii) When conducting an evaluation for fitness to  
19 proceed, one or three qualified examiners; or



1        (b) In nonfelony cases, when conducting an evaluation for  
2                    criminal responsibility or fitness to proceed, one  
3                    qualified examiner.

4 In examinations of criminal responsibility in felony cases the  
5 court shall appoint at least one [~~psychiatrist and at least one~~]  
6 licensed psychologist[-] and one qualified physician. The third  
7 member may be [~~a psychiatrist,~~] either a licensed  
8 psychologist[-] or a qualified physician. One of the three  
9 shall be a psychiatrist or licensed psychologist designated by  
10 the director of health from within the department of health. In  
11 examinations of fitness to proceed in felony and nonfelony cases  
12 the court may appoint either a psychiatrist or a licensed  
13 psychologist[-] and, in felony cases in which the court has  
14 determined that three qualified examiners shall examine the  
15 defendant, the second and third examiners shall be licensed  
16 psychologists or qualified physicians. All examiners shall be  
17 appointed from a list of certified examiners as determined by  
18 the department of health. The court, in appropriate  
19 circumstances, may appoint an additional examiner or examiners.  
20 The examination may be conducted on an out-patient basis or, in  
21 the court's discretion, when necessary the court may order the



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1 defendant to be committed to a hospital or other suitable  
 2 facility for the purpose of the examination for a period not  
 3 exceeding thirty days, or such longer period as the court  
 4 determines to be necessary for the purpose. The court may  
 5 direct that one or more qualified physicians or psychologists  
 6 retained by the defendant be permitted to witness the  
 7 examination. As used in this section, the term "licensed  
 8 psychologist" includes psychologists exempted from licensure by  
 9 section 465-3(a)(3)."

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

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

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INTRODUCED BY: Cindy Evans  
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JAN 22 2016



# H.B. NO. 1806

**Report Title:**

Criminal Proceedings; Mental Health Evaluations

**Description:**

Revises language pertaining to penal responsibility and mental health. Provides courts with discretion to appoint one mental health examiner, rather than three, to evaluate a felony defendant's mental fitness to proceed.

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

