

JAN 19 2018

A BILL FOR AN ACT

RELATING TO QUALIFIED EXAMINERS.

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

1 SECTION 1. The legislature finds that, under existing law,
2 persons charged with a felony must be examined by a panel of
3 three qualified examiners as a prerequisite to being declared
4 unfit to proceed with legal proceedings. There are currently
5 many legal proceedings that are not being completed in a timely
6 manner due to the high number of cases that require examiners
7 and the lack of qualified examiners in the State. Due to the
8 backlog of fitness examinations, persons spend an average of
9 four months in custody while awaiting examinations.

10 The legislature further finds that requiring three
11 qualified examiners to examine each person for whom there is
12 doubt about their fitness to proceed is excessive, as Hawaii is
13 the only state in the nation that requires three examiners.
14 Reducing the minimum number of qualified examiners will reduce
15 the backlog of fitness examinations and thus guard a person's
16 right to a speedy trial.



1 The purpose of this Act is to ease the requirements of
2 fitness to proceed examinations in felony cases.

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

5 "(2) Upon suspension of further proceedings in the
6 prosecution, the court shall appoint at least one, but not more
7 than three, qualified examiners in felony cases, and one
8 qualified examiner in nonfelony cases, to examine and report
9 upon the defendant's fitness to proceed. In felony cases, the
10 court shall appoint ~~[as examiners]~~ at least one psychiatrist
11 ~~[and at least one]~~ or licensed psychologist~~[- The third]~~ as an
12 examiner. Any other examiner may be a psychiatrist, licensed
13 psychologist, or qualified physician. ~~[One of the three~~
14 ~~examiners shall be a psychiatrist or licensed psychologist~~
15 ~~designated by the director of health.]~~ In nonfelony cases, the
16 court may appoint as examiners either a psychiatrist or a
17 licensed psychologist. All examiners shall be appointed from a
18 list of certified examiners as determined by the department of
19 health. The court, in appropriate circumstances, may appoint an
20 additional examiner or examiners. The examination may be
21 conducted while the defendant is in custody or on release or, in



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

12 SECTION 3. Act 231, Session Laws of Hawaii 2016, is
13 amended by amending section 5 to read as follows:

14 "SECTION 5. ~~[Section 704-404, Hawaii Revised Statutes, is~~
15 ~~amended by amending subsection (2) to read as follows:~~

16 ~~"(2) Upon suspension of further proceedings in the~~
17 ~~prosecution, the court shall appoint three qualified examiners~~
18 ~~in felony cases, and one qualified examiner in nonfelony cases,~~
19 ~~to examine and report upon the physical and mental condition of~~
20 ~~the defendant. In felony cases, the court shall appoint at~~
21 ~~least one psychiatrist and at least one licensed psychologist.~~



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



S.B. NO. 2431

SECTION 4. Act 231, Session Laws of Hawaii 2016, is amended by amending section 72 to read as follows:

"SECTION 72. This Act shall take effect on July 1, 2016; provided that:

(1) Sections ~~[5,]~~ 9~~[,]~~ and 12 shall take effect on July 1, 2018; and

(2) Section 64 shall take effect on June 30, 2016 and the amendments made to section 806-73(b), Hawaii Revised Statutes, in section 64 of this Act shall not be repealed when section 806-73(b), Hawaii Revised Statutes, is repealed and reenacted on July 1, 2016, pursuant to Act 119, Session Laws of Hawaii 2011."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect on June 30, 2018.

INTRODUCED BY:

Russell H. Baker

Clarence A. Fritchman
[Signature]
Will Loo



S.B. NO. 2431

Report Title:

Forensic Mental Health; Qualified Examiners

Description:

Allows a court to choose from 1 to 3 qualified examiners in felony cases in which a defendant's fitness to proceed is in doubt. Requires that at least 1 of the examiners is a psychiatrist or licensed psychologist. Removes the requirement that 1 of the 3 examiners shall be a psychiatrist or licensed psychologist designated by the director of health.

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