

---

---

# 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 court may:

14           (a) Suspend the proceedings and order the defendant to be  
15 transferred to the custody of the director of health  
16 and placed in a hospital or other suitable facility



1           for further examination and assessment, for up to  
2           seven days; and

3           (b) Dismiss the charges with or without prejudice.

4           (2) If the defendant's clinical team determines that the  
5 defendant meets the criteria for involuntary hospitalization set  
6 forth in section 334-60.2, the director of health shall file a  
7 petition for involuntary hospitalization pursuant to section  
8 334-60.3 in family court. If the petition is granted, the  
9 defendant shall remain hospitalized for a time period as  
10 provided by section 334-60.6.

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



1 specified by section 334-123. The clinical team shall identify  
2 a community mental health outpatient program that agrees to  
3 provide mental health services to the defendant as the  
4 designated mental health program under the assisted community  
5 treatment order. The defendant may be held at the hospital or  
6 other suitable facility pending the family court hearing on the  
7 petition for assisted community treatment. If the petition is  
8 granted, the defendant shall be released for treatment with the  
9 designated mental health program once the assisted community  
10 treatment order is issued and the initial treatment consistent  
11 with the assisted community treatment plan is administered to  
12 the defendant.

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

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

19 and

20 (2) Discharged from the hospital or other suitable  
21 facility."



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

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

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

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

16 (a) In nonfelony cases, if a court-based certified  
17 examiner is available, the court shall appoint the  
18 court-based certified examiner to examine and provide  
19 an expedited report solely upon the issue of the  
20 defendant's fitness to proceed. The court-based  
21 certified examiner shall file the examiner's report



1           with the court within two days of the appointment of  
2           the examiner. A fitness determination hearing shall  
3           be held within two days of the filing of the report,  
4           or as soon thereafter as is practicable;

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

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



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

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



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:

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  
12 704-407[~~7~~] and 704-\_\_\_, and the court shall commit the defendant  
13 to the custody of the director of health to be placed in [~~an~~  
14 ~~appropriate institution~~] a hospital or other suitable facility  
15 for detention, assessment, care, and treatment; provided that  
16 [~~the commitment shall be limited in certain cases as follows:~~

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





1       ~~(b) When the defendant is charged with a misdemeanor not~~  
2           ~~involving violence or attempted violence, the~~  
3           ~~commitment shall be limited to no longer than one~~  
4           ~~hundred twenty days from the date the court determines~~  
5           ~~the defendant lacks fitness to proceed.] defendant~~  
6           ~~shall be diverted from the criminal justice system~~  
7           ~~pursuant to section 704- .~~

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, assessment, care, and treatment, the  
3 county police departments shall provide to the director of  
4 health and the defendant copies of all police reports from cases  
5 filed against the defendant that have been adjudicated by the  
6 acceptance of a plea of guilty or nolo contendere, a finding of  
7 guilt, acquittal, acquittal pursuant to section 704-400, or by  
8 the entry of a plea of guilty or nolo contendere made pursuant  
9 to 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] as  
21 examiners psychiatrists, licensed psychologists, or~~



1           qualified physicians; provided that one of the three  
2           shall be a psychiatrist or licensed psychologist  
3           designated by the director of health from within the  
4           department of health. The three examiners shall be  
5           appointed from a list of certified examiners as  
6           determined by the department of health.

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



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

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



1 physicians or psychologists retained by the defendant be  
2 permitted to witness the examination. The examination and  
3 report and the compensation of persons making or assisting in  
4 the examination shall be in accordance with section 704-404(3),  
5 (5) (a) [~~and~~], (b), (d), and (e), (7), (8), (9), (10), and (11).  
6 As used in this section, the term "licensed psychologist"  
7 includes psychologists exempted from licensure by  
8 section 465-3(a)(3) and "qualified physician" means a physician  
9 qualified by the court for the specific evaluation ordered."

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

12 SECTION 7. This Act shall take effect on July 1, 2050.



S.B. NO. 2033  
S.D. 1

**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. Effective 7/1/2050. (SD1)

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

