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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

- 1 SECTION 1. The purpose of this Act is to:
- 2 (1) Provide for the examination of defendants through
- 3 telehealth;
- 4 (2) Amend the conditions for certain petty misdemeanants'
- 5 release or examination of fitness to proceed;
- 6 (3) Provide a mechanism for the automatic screening of
- 7 certain petty misdemeanants for involuntary
- 8 hospitalization or assisted community treatment; and
- 9 (4) Appropriate funds to provide additional job positions
- 10 and resources necessary for the implementation of this
- 11 Act.

12 SECTION 2. Chapter 704, Hawaii Revised Statutes, is

13 amended by adding a new section to be appropriately designated

14 and to read as follows:

15 "§704- Examination of defendants via telehealth. (1)

16 An examiner who is appointed by the court under chapter 704 may



1 be allowed to conduct their examination of defendants via  
2 telehealth pursuant to this chapter.

3 (2) Examination of defendants pursuant to this chapter may  
4 be conducted via telehealth at any facility under the  
5 jurisdiction of the director of health, director of law  
6 enforcement, director of corrections and rehabilitation, or  
7 chief justice.

8 (3) Each facility shall establish procedures regarding the  
9 provision and use of telehealth resources at appropriate  
10 facilities. The procedures shall ensure the widest availability  
11 of telehealth resources feasible at appropriate facilities.

12 (4) For purposes of this section, "telehealth" means the  
13 provision of health care or examination remotely by means of  
14 telecommunications technology by a health care professional or  
15 examiner in accordance with the requirements of section 453-  
16 1.3."

17 SECTION 3. Section 704-421, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"[+]§704-421[+] Proceedings for defendants charged with**  
20 **petty misdemeanors not involving violence or attempted violence;**  
21 **criminal justice diversion program. (1) In cases where the**



1 defendant is charged with a petty misdemeanor not involving  
2 violence or attempted violence, if, at the hearing held pursuant  
3 to section 704-404(2)(a) or at a further hearing held after the  
4 appointment of an examiner pursuant to section 704-404(2)(b),  
5 the court determines that the defendant is fit to proceed, then  
6 the proceedings against the defendant shall resume. In all  
7 other cases under this section where fitness remains an  
8 outstanding issue, the court shall continue the suspension of  
9 the proceedings and either commit the defendant to the custody  
10 of the director of health to be placed in a hospital or other  
11 suitable facility, including an outpatient facility, for further  
12 examination and assessment[-] or, in cases where the defendant  
13 was not subject to an order of commitment to the director of  
14 health for the purpose of the fitness examination under section  
15 704-404(2), the court may order that the defendant remain  
16 released on conditions the court determines necessary for  
17 placement in a group home, residence, or other facility  
18 prescribed by the director of health for further assessment by a  
19 clinical team pursuant to subsection (3).

20 (2) ~~[Within seven days from the commitment of the~~  
21 ~~defendant to the custody of the director of health, or as soon~~



1 ~~thereafter as is practicable, the director of health]~~ In cases  
2 under this section where the defendant's fitness to proceed  
3 remains an outstanding issue at the hearing held pursuant to  
4 section 704-404(2)(a) or a further hearing held after the  
5 appointment of an examiner pursuant to section 704-404(2)(b), as  
6 applicable, the director of health, within seven days of that  
7 hearing or as soon thereafter as is practicable, shall report to  
8 the court on the following:

9 (a) The defendant's current capacity to understand the  
10 proceedings against the defendant and the defendant's  
11 current ability to assist in the defendant's own  
12 defense[-];

13 (b) Whether, after assessment of the defendant pursuant to  
14 subsection (3)(a) or (b), the defendant's clinical  
15 team believes that the defendant meets the criteria  
16 for involuntary hospitalization under section 334-60.2  
17 or assisted community treatment under section 334-121;  
18 and

19 (c) The date that the director of health filed a petition  
20 for involuntary hospitalization or assisted community



1           treatment on behalf of the defendant pursuant to  
2           subsection (3)(a) or (b), as applicable.  
3 If, following the report, the court finds the defendant fit to  
4 proceed, the proceedings against the defendant shall resume. In  
5 all other cases, the court shall dismiss the charge with or  
6 without prejudice in the interest of justice. [~~The director of~~  
7 ~~health may at any time proceed under the provisions of section~~  
8 ~~334-60.2 or 334-121.]~~

9           (3) During the defendant's commitment to the custody of  
10 the director of health or release on conditions pursuant to  
11 subsection (1):

12           (a) If the defendant's clinical team determines that the  
13 defendant meets the criteria for involuntary  
14 hospitalization set forth in section 334-60.2, the  
15 director of health, within seven days of the clinical  
16 team's determination, shall file with the family court  
17 a petition for involuntary hospitalization pursuant to  
18 section 334-60.3. If the petition is granted, the  
19 defendant shall remain hospitalized for a period of  
20 time as provided by section 334-60.6; or



1        (b) If the defendant's clinical team determines that the  
2        defendant does not meet the criteria for involuntary  
3        hospitalization, or the court denies the petition for  
4        involuntary hospitalization, the defendant's clinical  
5        team shall determine whether an assisted community  
6        treatment plan is appropriate pursuant to part VIII of  
7        chapter 334. If the clinical team determines that an  
8        assisted community treatment plan is appropriate, the  
9        psychiatrist or advanced practice registered nurse  
10       from the clinical team shall prepare the certificate  
11       for assisted community treatment specified by section  
12       334-123, including a written treatment plan for the  
13       provision of mental health services to the defendant.  
14       The clinical team shall identify a community mental  
15       health outpatient program that agrees to provide  
16       mental health services to the defendant as the  
17       designated mental health program under the assisted  
18       community treatment order. The clinical team shall  
19       provide the defendant with a copy of the certificate.  
20       Within ten days of provision of the certificate to the  
21       defendant by the clinical team, the director of health



1           shall file with the family court the assisted  
2           community treatment petition described in section 334-  
3           123. When a petition for assisted community treatment  
4           has been filed for a defendant, the defendant  
5           committed to the custody of the director of health  
6           shall remain in custody until the family court issues  
7           a decision on the petition.

8           (4) This section shall not apply to any case under the  
9           jurisdiction of the family court unless the presiding judge  
10          orders otherwise."

11          SECTION 4. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$                    or so  
13 much thereof as may be necessary for fiscal year 2024-2025 for  
14 the purposes of this Act.

15          The sum appropriated shall be expended by the department of  
16 health for the purposes of this Act.

17          SECTION 5. There is appropriated out of the general  
18 revenues of the State of Hawaii the sum of \$                    or so  
19 much thereof as may be necessary for fiscal year 2024-2025 for  
20 the establishment of            full-time equivalent (            FTE)  
21 positions (\$                    ) and for additional resources necessary



1 to accommodate telehealth examinations of defendants pursuant to  
2 this Act.

3 The sum appropriated shall be expended by the department of  
4 corrections and rehabilitation for the purposes of this Act.

5 SECTION 6. There is appropriated out of the general  
6 revenues of the State of Hawaii the sum of \$ or so  
7 much thereof as may be necessary for fiscal year 2024-2025 for  
8 the establishment of full-time equivalent ( FTE)  
9 positions (\$ ) and for additional resources necessary  
10 to accommodate telehealth examinations of defendants pursuant to  
11 this Act.

12 The sum appropriated shall be expended by the judiciary for  
13 the purposes of this Act.

14 SECTION 7. In accordance with section 9 of article VII of  
15 the Hawaii State Constitution and sections 37-91 and 37-93,  
16 Hawaii Revised Statutes, the legislature has determined that the  
17 appropriations contained in H.B. No. , will cause the state  
18 general fund expenditure ceiling for fiscal year 2024-2025 to be  
19 exceeded by \$ or per cent. In addition, the  
20 appropriation contained in this Act will cause the general fund  
21 expenditure ceiling for fiscal year 2024-2025 to be further



1 exceeded by \$                    or                    per cent. The combined total  
2 amount of general fund appropriations contained in only these  
3 two Acts will cause the state general fund expenditure ceiling  
4 for fiscal year 2024-2025 to be exceeded by  
5 \$                    or                    per cent. The reasons for exceeding the  
6 general fund expenditure ceiling are that:

- 7            (1) The appropriation made in this Act is necessary to  
8                    serve the public interest; and  
9            (2) The appropriation made in this Act meets the needs  
10                    addressed by this Act.

11            SECTION 8. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13            SECTION 9. This Act shall take effect on July 1, 3000.



**Report Title:**

Mental Health; Fitness To Proceed; Examination Via Telehealth;  
Judiciary; Department of Corrections and Rehabilitation;  
Appropriation; Expenditure Ceiling

**Description:**

Authorizes examination of defendants via telehealth. Amends conditions for certain petty misdemeanants' release or examination of fitness to proceed. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Appropriates funds. Effective 7/1/3000. (HD3)

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

