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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  
17 examine the defendant via telehealth pursuant to this chapter.



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

6       (3) Each facility shall establish procedures regarding the  
7 provision and use of telehealth resources at the respective  
8 facility. The procedures shall ensure the widest possible  
9 availability of telehealth resources.

10       (4) For purposes of this section, "telehealth" has the  
11 same meaning as defined in section 453-1.3."

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

14       "~~§~~704-421~~§~~ Proceedings for defendants charged with  
15 petty misdemeanors not involving violence or attempted violence;  
16 criminal justice diversion program. (1) In cases where the  
17 defendant is charged with a petty misdemeanor not involving  
18 violence or attempted violence, if, at the hearing held pursuant  
19 to section 704-404(2)(a) or at a further hearing held after the  
20 appointment of an examiner pursuant to section 704-404(2)(b),  
21 the court determines that the defendant is fit to proceed, then



1 the proceedings against the defendant shall resume. In all  
2 other cases under this section where fitness remains an  
3 outstanding issue, the court shall continue the suspension of  
4 the proceedings and either commit the defendant to the custody  
5 of the director of health to be placed in a hospital or other  
6 suitable facility, including an outpatient facility, for further  
7 examination and assessment[-] or, in cases where the defendant  
8 was not subject to an order of commitment to the director of  
9 health for the purpose of the fitness examination under section  
10 704-404(2), the court may order that the defendant remain  
11 released on conditions the court determines necessary for  
12 placement in a group home, residence, or other facility  
13 prescribed by the director of health for further assessment by a  
14 clinical team pursuant to subsection (3).

15 (2) [~~Within seven days from the commitment of the~~  
16 ~~defendant to the custody of the director of health, or as soon~~  
17 ~~thereafter as is practicable, the director of health] In cases  
18 under this section where the defendant's fitness to proceed  
19 remains an outstanding issue at the hearing held pursuant to  
20 section 704-404(2)(a) or a further hearing held after the  
21 appointment of an examiner pursuant to section 704-404(2)(b), as~~



1 applicable, the director of health, within seven days of that  
2 hearing or as soon thereafter as is practicable, shall report to  
3 the court on the following:

4       (a) The defendant's current capacity to understand the  
5           proceedings against the defendant and the defendant's  
6           current ability to assist in the defendant's own  
7           defense[-];

8       (b) Whether, after assessment of the defendant pursuant to  
9           subsection (3)(a) or (b), the defendant's clinical  
10          team believes that the defendant meets the criteria  
11          for involuntary hospitalization under section 334-60.2  
12          or assisted community treatment under section 334-121;  
13          and

14       (c) The date that the director of health filed a petition  
15          for involuntary hospitalization or assisted community  
16          treatment on behalf of the defendant pursuant to  
17          subsection (3)(a) or (b), as applicable.

18 If, following the report, the court finds the defendant fit to  
19 proceed, the proceedings against the defendant shall resume. In  
20 all other cases, the court shall dismiss the charge with or  
21 without prejudice in the interest of justice. [~~The director of~~



1 ~~health may at any time proceed under the provisions of section~~  
2 ~~334-60.2 or 334-121.]~~

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

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

15 (b) If the defendant's clinical team determines that the  
16 defendant does not meet the criteria for involuntary  
17 hospitalization, or the court denies the petition for  
18 involuntary hospitalization, the defendant's clinical  
19 team shall determine whether an assisted community  
20 treatment plan is appropriate pursuant to part VIII of  
21 chapter 334. If the clinical team determines that an



1 assisted community treatment plan is appropriate, the  
2 psychiatrist or advanced practice registered nurse  
3 from the clinical team shall prepare the certificate  
4 for assisted community treatment specified by section  
5 334-123, including a written treatment plan for the  
6 provision of mental health services to the defendant.  
7 The clinical team shall identify a community mental  
8 health outpatient program that agrees to provide  
9 mental health services to the defendant as the  
10 designated mental health program under the assisted  
11 community treatment order. The clinical team shall  
12 provide the defendant with a copy of the certificate.  
13 Within ten days of provision of the certificate to the  
14 defendant by the clinical team, the director of health  
15 shall file with the family court the assisted  
16 community treatment petition described in section  
17 334-123. When a petition for assisted community  
18 treatment has been filed for a defendant, the  
19 defendant committed to the custody of the director of  
20 health shall remain in custody until the family court  
21 issues a decision on the petition.



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

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

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

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

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

19       SECTION 6. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$                    or so  
21 much thereof as may be necessary for fiscal year 2024-2025 for



1 the establishment of full-time equivalent ( FTE)  
2 positions (\$ ) and for additional resources necessary  
3 to accommodate telehealth examinations of defendants pursuant to  
4 this Act.

5 The sum appropriated shall be expended by the judiciary for  
6 the purposes of this Act.

7 SECTION 7. In accordance with section 9 of article VII of  
8 the Hawaii State Constitution and sections 37-91 and 37-93,  
9 Hawaii Revised Statutes, the legislature has determined that the  
10 appropriations contained in H.B. No. , will cause the state  
11 general fund expenditure ceiling for fiscal year 2024-2025 to be  
12 exceeded by \$ or per cent. In addition, the  
13 appropriation contained in this Act will cause the general fund  
14 expenditure ceiling for fiscal year 2024-2025 to be further  
15 exceeded by \$ or per cent. The combined total  
16 amount of general fund appropriations contained in only these  
17 two Acts will cause the state general fund expenditure ceiling  
18 for fiscal year 2024-2025 to be exceeded by  
19 \$ or per cent. The reasons for exceeding the  
20 general fund expenditure ceiling are that:





1           (1) The appropriation made in this Act is necessary to  
2           serve the public interest; and

3           (2) The appropriation made in this Act meets the needs  
4           addressed by this Act.

5           SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 9. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**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. Declares that the appropriations exceed the general fund expenditure ceiling for 2024-2025. 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.*

