
A BILL FOR AN ACT

RELATED 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; and

4 (2) Appropriate funds to provide additional job positions
5 and resources for the implementation of this Act.

6 SECTION 2. Chapter 704, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§704- Examination of defendants via telehealth. (1)

10 An examiner who is appointed by the court under this chapter,
11 may conduct an examination of a defendant via telehealth
12 pursuant to this chapter.

13 (2) Examination of a defendant pursuant to subsection (1)
14 may be conducted via telehealth at any facility under the
15 jurisdiction of the director of health, director of law
16 enforcement, director of corrections and rehabilitation, or the
17 chief justice.



1 (3) Each facility shall establish procedures regarding the
2 provision and use of telehealth resources at appropriate
3 facilities. The procedures shall ensure the widest availability
4 of telehealth resources feasible at appropriate facilities.

5 (4) For purposes of this section, "telehealth" means the
6 provision of health care or examination remotely by means of
7 telecommunications technology by a health care professional or
8 examiner in accordance with the requirements of section
9 453-1.3."

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

12 "~~§~~704-421~~§~~ Proceedings for defendants charged with
13 petty misdemeanors not involving violence or attempted violence;
14 criminal justice diversion program. (1) In cases where the
15 defendant is charged with a petty misdemeanor not involving
16 violence or attempted violence, if, at the hearing held pursuant
17 to section 704-404(2)(a) or at a further hearing held after the
18 appointment of an examiner pursuant to section 704-404(2)(b),
19 the court determines that the defendant is fit to proceed, then
20 the proceedings against the defendant shall resume. In all
21 other cases under this section where fitness remains an



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

13 (2) Within seven days from the commitment of the defendant
14 to the custody of the director of health, or as soon thereafter
15 as is practicable, the director of health shall report to the
16 court on the following:

17 (a) The defendant's current capacity to understand the
18 proceedings against the defendant and defendant's
19 current ability to assist in the defendant's own
20 defense[-] ;



1 (b) Whether, after assessment of the defendant pursuant to
2 subsection (3)(a) or (b), the defendant's clinical
3 team believes that the defendant meets the criteria
4 for involuntary hospitalization under section 334-60.2
5 or assisted community treatment under section 334-121;
6 and

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

11 If, following the report, the court finds defendant fit to
12 proceed, the proceedings against the defendant shall resume. In
13 all other cases, the court shall dismiss the charge with or
14 without prejudice in the interest of justice. [~~The director of~~
15 ~~health may at any time proceed under the provisions of section~~
16 ~~334-60.2 or 334-121.]~~

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

20 (a) If the defendant's clinical team determines that the
21 defendant meets the criteria for involuntary



1 hospitalization set forth in section 334-60.2, the
2 director of health, within seven days of the clinical
3 team's determination, shall file a petition for
4 involuntary hospitalization pursuant to section
5 334-60.3 with the family court. If the petition is
6 granted, the defendant shall remain hospitalized for a
7 time period as provided in section 334-60.6; or
8 (b) If the defendant's clinical team determines that the
9 defendant does not meet the criteria for involuntary
10 hospitalization, or the court denies the petition for
11 involuntary hospitalization, the defendant's clinical
12 team shall determine whether an assisted community
13 treatment plan is appropriate pursuant to part VIII of
14 chapter 334. If the clinical team determines that an
15 assisted community treatment plan is appropriate, the
16 psychiatrist or advanced practice registered nurse
17 from the clinical team shall prepare the certificate
18 for assisted community treatment specified by section
19 334-123, which certificate shall include a written
20 treatment plan for the provision of mental health
21 services to the defendant. The clinical team shall



1 identify a community mental health outpatient program
2 that agrees to provide mental health services to the
3 defendant as the designated mental health program
4 under the assisted community treatment order. The
5 clinical team shall provide the defendant with a copy
6 of the certificate. If the defendant declines to
7 accept the mental health services described in the
8 certificate prepared pursuant to this paragraph, then
9 the director of health, within ten days of the
10 defendant's refusal of services described in the
11 certificate, shall file the assisted community
12 treatment petition described in section 334-123 with
13 the family court. When a petition for assisted
14 community treatment has been filed for a defendant,
15 the defendant committed to the custody of the director
16 of health shall remain in custody until the family
17 court issues a decision on the petition.

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



1 SECTION 4. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$500,000 or so much
3 thereof as may be necessary for fiscal year 2024-2025 for
4 additional job positions and resources for the implementation of
5 this Act.

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

8 SECTION 5. In accordance with section 9 of article VII of
9 the Hawaii State Constitution and sections 37-91 and 37-93,
10 Hawaii Revised Statutes, the legislature has determined that the
11 appropriations contained in Act 164, Regular Session of 2023,
12 and this Act will cause the state general fund expenditure
13 ceiling for fiscal year 2024-2025 to be exceeded by
14 \$ or per cent. This current declaration takes
15 into account general fund appropriations authorized for fiscal
16 year 2024-2025 in Act 164, Regular Session of 2023, and this Act
17 only. The reasons for exceeding the general fund expenditure
18 ceiling are that:

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



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

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

5 SECTION 7. This Act shall take effect on July 1, 2024.



Report Title:

DOH; Mental Health; Defendants; Fitness to Proceed; Examination Via Telehealth; Expenditure Ceiling; Appropriation

Description:

Authorizes examination of defendants via telehealth. Amends conditions for a defendant's release or examination of fitness to proceed. Declares that the general fund expenditure ceiling is exceeded. Makes an appropriation. (SD1)

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