

JAN 17 2025

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# A BILL FOR AN ACT

RELATING TO FITNESS TO PROCEED.

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

1       SECTION 1. The purpose of this Act is to:

2       (1) Reduce overcrowding at hospitals and mental health  
3       facilities by clarifying the term of a defendant's  
4       commitment to a hospital or facility for purposes of a  
5       fitness-to-proceed examination;

6       (2) Increase the number of available private examiners and  
7       expedite examination reports by increasing  
8       compensation for and clarifying the types of  
9       professionals who may serve as a private examiner  
10      pursuant to section 704-404, Hawaii Revised Statutes;

11      (3) Reduce from three to two the number of qualified  
12      examiners required for a fitness-to-proceed  
13      examination in a felony case, unless the examiners  
14      disagree on the defendant's fitness; and

15      (4) Reduce penalties to be commensurate with the  
16      underlying offense for a person charged with a  
17      non-violent petty misdemeanor who escapes from the



1 custody of the director of health while pending  
2 examination or assessment pursuant to  
3 section 704-421(1), Hawaii Revised Statutes.

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

6 1. By amending subsection (2) to read:

7 "(2) Upon suspension of further proceedings in the  
8 prosecution:

9 (a) In cases where the defendant is charged with a [~~petty~~  
10 ~~misdemeanor~~] crime not involving violence or attempted  
11 violence, if a court-based certified examiner is  
12 available, the court shall appoint the court-based  
13 certified examiner to examine and provide an expedited  
14 report solely upon the issue of the defendant's  
15 capacity to understand the proceedings against the  
16 defendant and defendant's ability to assist in the  
17 defendant's own defense. The court-based certified  
18 examiner shall file the examiner's report with the  
19 court within two days of the appointment of the  
20 examiner, or as soon thereafter is practicable. A  
21 hearing shall be held to determine if the defendant is



1 fit to proceed within two days of the filing of the  
2 report, or as soon thereafter as is practicable;

3 (b) ~~[In all other nonfelony cases, and where]~~ Where a  
4 court-based certified examiner is not available in  
5 cases under paragraph (a), the court shall appoint one  
6 qualified examiner to examine and report upon the  
7 defendant's fitness to proceed. The court may appoint  
8 as the examiner ~~[either]~~ a healthcare professional  
9 designated by the director of health from within the  
10 department of health, including a psychiatrist, an  
11 advanced practice registered nurse specializing in  
12 psychiatry, or a licensed psychologist ~~[designated by~~  
13 ~~the director of health from within the department of~~  
14 ~~health]; and~~

15 (c) In felony cases, the court shall appoint ~~[three]~~ two  
16 qualified examiners to examine and report upon the  
17 defendant's fitness to proceed~~[-]~~; provided that in  
18 the event of a disagreement as to the recommendations  
19 of these examiners, a third examiner shall be  
20 appointed. The court shall appoint as examiners  
21 psychiatrists, licensed psychologists, advanced



1           practice registered nurses specializing in psychiatry,  
2           or qualified physicians; provided that one of the  
3           ~~[three]~~ two examiners shall be a psychiatrist,  
4           advanced practice registered nurse specializing in  
5           psychiatry, or licensed psychologist designated by the  
6           director of health from within the department of  
7           health.

8 All examiners shall be appointed from a list of certified  
9 examiners as determined by the department of health. The court,  
10 in appropriate circumstances, may appoint an additional examiner  
11 or examiners. The examination may be conducted while the  
12 defendant is in custody or on release or, in the court's  
13 discretion, when necessary the court may order the defendant to  
14 be committed to a hospital or other suitable facility for the  
15 purpose of the examination ~~[for a period not exceeding thirty~~  
16 ~~days, or a longer period as the court determines to be necessary~~  
17 ~~for the purpose.];~~ provided that the court shall hold a status  
18 hearing no later than fourteen days after the defendant is  
19 committed to determine whether it is necessary to continue to  
20 commit the defendant; provided further that if the court  
21 determines that it is necessary to continue to commit the



1 defendant to the custody of the hospital or facility beyond  
2 fourteen days, the court shall hold a status hearing on the  
3 thirtieth day to determine whether it is necessary to continue  
4 to commit the defendant. If the thirtieth day falls on a  
5 Saturday, Sunday, or holiday, the hearing shall be held on the  
6 next court day. The court may direct that one or more qualified  
7 physicians or psychologists retained by the defendant be  
8 permitted to witness the examination. As used in this section,  
9 the term "licensed psychologist" includes psychologists exempted  
10 from licensure by section 465-3(a)(3) and "qualified physician"  
11 means a physician qualified by the court for the specific  
12 ~~[evaluation]~~ examination ordered."

13 2. By amending subsection (11) to read:

14 "(11) The compensation of persons making or assisting in  
15 the examination, other than those retained by a nonindigent  
16 defendant, who are not undertaking the examination upon  
17 designation by the director of health as part of their normal  
18 duties as employees of the State or a county, shall be paid by  
19 the State. The rate of compensation paid by the State shall be  
20 \$ \_\_\_\_\_ per examination, which shall include payment for and  
21 be in full satisfaction of:



- 1        (a) The examination;  
2        (b) Report drafting; and  
3        (c) Any consultation, preparation, testimony, or  
4        attendance for purposes of court proceedings."

5        SECTION 3. Section 710-1021, Hawaii Revised Statutes, is  
6        amended to read as follows:

7        **"§710-1021 Escape in the second degree.** (1) A person  
8        commits the offense of escape in the second degree if the person  
9        intentionally escapes from a correctional or detention facility  
10       or from custody.

11       (2) ~~[Escape]~~ Except as provided in subsection (3), escape  
12       in the second degree ~~[is]~~ shall be a class C felony.

13       (3) Notwithstanding subsection (2), if a person escapes  
14       from the custody of the director of health while awaiting  
15       examination or assessment pursuant to section 704-421(1), escape  
16       in the second degree shall be a petty misdemeanor; provided that  
17       this subsection shall not apply if the person commits a new  
18       felony offense in the course or during the pendency of the  
19       escape."



1       SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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

6       SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line.

# S.B. NO. 955

**Report Title:**

DOH; Judiciary; Penal Code; Fitness to Proceed; Escape From Custody

**Description:**

Clarifies the term of commitment for a defendant being held at a hospital or mental health facility for a fitness-to-proceed examination. Clarifies who may serve as a qualified examiner. Reduces from 3 to 2 the number of qualified examiners required for a fitness-to-proceed examination in a felony case, unless the examiners disagree on the defendant's fitness. Establishes the rate of compensation for conducting the examinations. Establishes a reduced penalty, except in certain circumstances, for a person who commits the offense of escape in the second degree while in the custody of the Director of Health under section 704-421(1), Hawaii Revised Statutes.

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

