
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) Clarify the types of professionals who may serve as a
- 3 private examiner for a fitness-to-proceed examination;
- 4 (2) Clarify the term of a defendant's commitment to a
- 5 hospital or facility for purposes of a fitness-to-
- 6 proceed examination;
- 7 (3) Reduce from three to one the number of qualified
- 8 examiners required for a fitness-to-proceed
- 9 examination in a felony case; and
- 10 (4) Reduce penalties to be commensurate with the
- 11 underlying offense for a person charged with a
- 12 nonviolent crime who escapes from the custody of the
- 13 director of health while awaiting a fitness-to-proceed
- 14 examination.

15 SECTION 2. Section 704-404, Hawaii Revised Statutes, is

16 amended by amending subsection (2) to read as follows:



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

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

18 (b) [~~In all other nonfelony cases, and where~~] Where a
19 court-based certified examiner is not available in
20 cases under paragraph (a), the court shall appoint one
21 qualified examiner to examine and report upon the



1 defendant's fitness to proceed. The court may appoint
2 as the examiner [~~either~~] a health care professional
3 designated by the director of health from within the
4 department of health, including a psychiatrist, an
5 advanced practice registered nurse specializing in
6 psychiatry, or a licensed psychologist [~~designated by~~
7 ~~the director of health from within the department of~~
8 ~~health]~~; and

- 9 (c) In felony cases, the court shall appoint [~~three~~] one
10 qualified [~~examiners~~] examiner to examine and report
11 upon the defendant's fitness to proceed. The court
12 shall also receive a report from the treating
13 clinician on the defendant's fitness to proceed. The
14 court shall appoint as [~~examiners psychiatrists,~~
15 ~~licensed psychologists, or qualified physicians;]~~ an
16 examiner a psychiatrist, licensed psychologist,
17 advanced practice registered nurse specializing in
18 psychiatry, or qualified physician; provided that [~~one~~
19 ~~of the three examiners shall be]~~ the court may appoint
20 as an examiner a psychiatrist, advanced practice
21 registered nurse specializing in psychiatry, or



1 licensed psychologist designated by the director of
2 health from within the department of health.

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



1 Hawaii state hospital. If the thirtieth day falls on a
2 Saturday, Sunday, or holiday, the hearing shall be held on the
3 next court day. The court may direct that one or more qualified
4 physicians or psychologists retained by the defendant be
5 permitted to witness the examination. As used in this section,
6 the term "licensed psychologist" includes psychologists exempted
7 from licensure by section 465-3(a)(3) and "qualified physician"
8 means a physician qualified by the court for the specific
9 ~~[evaluation]~~ examination ordered."

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

12 "**§710-1021 Escape in the second degree.** (1) A person
13 commits the offense of escape in the second degree if the person
14 intentionally escapes from a correctional or detention facility
15 or from custody.

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

18 (3) Notwithstanding subsection (2), if a person escapes
19 from the custody of the director of health while awaiting
20 examination or assessment pursuant to section 704-421(1), escape
21 in the second degree shall be a petty misdemeanor; provided that



1 this subsection shall not apply if the person commits a new
2 felony offense in the course of or during the pendency of the
3 escape."

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

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

9 SECTION 6. This Act shall take effect on July 1, 3000;
10 provided that on December 31, 2026, the amendments made to
11 subsection 707-404(2), Hawaii Revised Statutes, by section 2 of
12 this Act shall be repealed and that subsection shall be
13 reenacted in the form in which it read on the day prior to the
14 effective date of this Act.



Report Title:

DOH; Judiciary; Penal Code; Fitness-to-Proceed Examinations;
Qualified Examiners; Escape From Custody

Description:

Clarifies who may serve as a qualified examiner in a fitness-to-proceed examination. Clarifies the term of commitment for a defendant being held at a hospital or mental health facility for a fitness-to-proceed examination. Reduces the number of qualified examiners required for a fitness-to-proceed examination in a felony case from 3 to 1. 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. Sunsets the amendments related to fitness-to-proceed examinations on 12/31/26. Effective 7/1/3000. (HD1)

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