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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 the number of qualified examiners required for  
12      a fitness-to-proceed examination in a felony case from  
13      three to one; and

14      (4) Reduce penalties to be commensurate with the  
15      underlying offense for a person charged with a  
16      nonviolent petty misdemeanor who escapes from the  
17      custody of the director of health while pending



1 examination or assessment pursuant to

2 section 704-421(1), Hawaii Revised Statutes.

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

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

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

8 (a) In cases where the defendant is charged with a [~~petty~~  
9 ~~misdemeanor~~] crime not involving violence or attempted  
10 violence, if a court-based certified examiner is  
11 available, the court shall appoint the court-based  
12 certified examiner to examine and provide an expedited  
13 report solely upon the issue of the defendant's  
14 capacity to understand the proceedings against the  
15 defendant and defendant's ability to assist in the  
16 defendant's own defense. The court-based certified  
17 examiner shall file the examiner's report with the  
18 court within two days of the appointment of the  
19 examiner, or as soon thereafter is practicable. A  
20 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 health care 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~~] one  
16 qualified [~~examiners~~] examiner to examine and report  
17 upon the defendant's fitness to proceed. The court  
18 shall appoint as [~~examiners psychiatrists, licensed~~  
19 ~~psychologists, or qualified physicians,~~] an examiner a  
20 psychiatrist, licensed psychologist, advanced practice  
21 registered nurse specializing in psychiatry, or



1 qualified physician; provided that [one of the three  
2 examiners shall be] the court may appoint as an  
3 examiner a psychiatrist, advanced practice registered  
4 nurse specializing in psychiatry, or licensed  
5 psychologist designated by the director of health from  
6 within the department of health.

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



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

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

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

21 (a) The examination;



1        (b) Report drafting; and

2        (c) Any consultation, preparation, testimony, or

3        attendance for purposes of court proceedings."

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

6        "**§710-1021 Escape in the second degree.** (1) A person  
7 commits the offense of escape in the second degree if the person  
8 intentionally escapes from a correctional or detention facility  
9 or from custody.

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

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

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



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

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



**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 the number of qualified examiners required for a fitness-to-proceed examination in a felony case from three to one. 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. (SD1)

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

