THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 955

JAN 17 2025

A BILL FOR AN ACT

RELATING TO FITNESS TO PROCEED.

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

SECTION 1. The purpose of this Act is to:

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

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

(3) Reduce from three to two 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; and

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

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

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

1. By amending subsection (2) to read:

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

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

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

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

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

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

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

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

2. By amending subsection (11) to read:

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

(a) The examination;

(b) Report drafting; and

(c) Any consultation, preparation, testimony, or attendance for purposes of court proceedings."

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

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

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

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

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

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

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

INTRODUCED BY: _____

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.

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