

ACT 305

S.B. NO. 3291

A Bill for an Act Relating to Psychology.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 351-15, Hawaii Revised Statutes, is amended to read as follows:

“**§351-15 Medical examination.** The criminal injuries compensation commission may appoint an impartial licensed physician or licensed psychologist to

examine any person making application under this chapter, and the fees for the examination shall be paid from funds appropriated for expenses of administration."

SECTION 2. Section 353-66, Hawaii Revised Statutes, is amended to read as follows:

"§353-66 Terms and conditions of parole; suspension and revocation. Every parole granted under this part to any prisoner shall be subject to the express condition, to be set forth in the official written notification of parole to the prisoner, but to be binding upon the prisoner in any event, that all or any portion of the prisoner's credits earned or to be earned may be forfeited by order of the Hawaii paroling authority in the event that the prisoner breaks the prisoner's parole or violates any law of the State or rule [or regulation] of the paroling authority or any of the terms or conditions of the prisoner's parole. No parole shall be revoked and no credits forfeited without cause, which cause must be stated in the order revoking the parole, or forfeiting the credits after notice to the paroled prisoner of the paroled prisoner's alleged offense and an opportunity to be heard; provided that when a person is convicted in the State of a crime committed while on parole and is sentenced to imprisonment, or when it is shown by personal investigation that a parolee has left the State without permission from the paroling authority and due effort is made to reach the parolee by registered mail directed to the parolee's last known address, no hearing shall be required to revoke the parolee's parole; and provided further that when any duly licensed psychiatrist or licensed psychologist finds that continuance on parole will not be in the best interests of a parolee or the community, the paroling authority, within the limitations of the sentence imposed, shall order the detention and treatment of the prisoner until such time as the prisoner shall be found by any duly licensed psychiatrist or licensed psychologist to be [psychiatrically] eligible for continuance on parole.

If any paroled prisoner leaves the State without permission from the paroling authority, or if the whereabouts of any paroled prisoner is not known to the paroling authority because of the neglect or failure of the prisoner to so inform it, the paroling authority may order the parole suspended pending apprehension. From and after the suspension of the parole of any paroled prisoner and until the paroled prisoner's return to custody, the paroled prisoner shall be deemed an escapee and a fugitive from justice, and no part of the time during which the paroled prisoner is an escapee and a fugitive from justice shall be part of the paroled prisoner's term.

The paroling authority may at any time order the arrest and temporary return to custody of any paroled prisoner, as provided in section 353-65, for the purpose of ascertaining whether or not there is sufficient cause to warrant the paroled prisoner's reimprisonment or the revoking of the paroled prisoner's parole or other action provided for by this part.

Any paroled prisoner retaken and reimprisoned as provided in this chapter shall be confined according to the paroled prisoner's sentence for that portion of the paroled prisoner's term remaining unserved at time of parole, but successive paroles may, in the discretion of the paroling authority, be granted to the prisoner during the life and in respect of the sentence."

SECTION 3. Section 560:5-303, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the filing of a petition, the family court shall set a date for hearing on the issues of incapacity and, if at any time in the proceeding, the court determines that the interests of the allegedly incapacitated person are or may be inadequately represented, it shall appoint a guardian ad litem. The person alleged to be inca-

pacitated may be examined by a physician or licensed psychologist appointed by the family court who shall submit [his] a report in writing to the court and may be interviewed by a family court officer or other person designated by the family court. If so ordered by the family court, the family court officer or other person also shall interview the person seeking appointment as guardian of the person, shall visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that [he] the person will be detained or reside if the requested appointment is made, and shall submit [his] a report in writing to the family court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon [his] the person's condition. [He] The person alleged to be incapacitated is entitled to be represented by an attorney, to present evidence, to cross-examine witnesses, including any person submitting a report and the family court officer or other person designated by the court to interview [him] the person. The issue may be determined at a closed hearing.”

SECTION 4. Section 560:5-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon receipt of a petition for appointment of a guardian of the property or other protective order for reasons other than minority, the court shall set a date for hearing on the matters alleged in the petition. Unless the person to be protected has competent counsel of [his] that person's own choice, the court shall appoint an appropriate official or attorney to represent [him] the person, who shall have the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician or, with the exception of physical illness or disability, a licensed psychologist designated by the court, preferably a physician or psychologist who is not connected with any institution in which the person is a patient or is detained. The court may appoint a court officer or other person to interview the person to be protected and the person seeking appointment. The person so appointed shall submit [his] a report in writing to the court.”

SECTION 5. Section 704-404, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified [[sanity]] examiners as determined by the state department of health. 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 such longer period as the court determines to be necessary for the purpose, and may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination.”

SECTION 6. Section 704-410, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) At the hearing pursuant to section 704-405 or upon the trial, the examiners who reported pursuant to section 704-404 may be called as witnesses

by the prosecution, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiners or any of them were designated by the court or by the director of health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and the defendant. Both the prosecution and the defendant may summon any other qualified physician or licensed psychologist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the physical or mental condition of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness."

SECTION 7. Section 704-411, Hawaii Revised Statutes, is amended by amending subsections (1), (3), and (4) to read as follows:

"(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court shall, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, make an order as follows:

- (a) The court shall order him to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant presents a risk of danger to himself or others and that he is not a proper subject for conditional release; provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others; or
- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that he presents a danger to himself or others, but that he can be controlled adequately and given proper care, supervision, and treatment if he is released on condition; or
- (c) The court shall order him discharged from custody if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect, or, if so affected, that he no longer presents a danger to himself or others and is not in need of care, supervision, or treatment."

"(3) When ordering such a hearing the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified sanity examiners as determined by the state department of health. To facilitate such examination and the proceedings thereon, the court may cause the defendant, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section [465-3(3)] 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant may not safely be discharged and that he should be either committed or conditionally released as provided in subsection (1)."

SECTION 8. Section 704-413, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Any person released on condition pursuant to section 704-411 may apply to the court ordering the conditional release for discharge from or modification of the order granting conditional release on the ground that he may be discharged or the order modified without danger to himself or to others. The application shall be accompanied by a supporting affidavit of a qualified physician[.] or licensed psychologist. A copy of the application and affidavit shall be transmitted to the prosecuting attorney of the county in which the person is confined and to any persons supervising his release and the hearing on the application shall be held following notice to such persons. If the determination of the court is adverse to the application, such person shall not be permitted to file further application until one year has elapsed from the date of any preceding hearing on an application for modification of conditions of release or for discharge."

SECTION 9. Section 704-414, Hawaii Revised Statutes, is amended to read as follows:

"§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release. Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified sanity examiners as determined by the state department of health. To facilitate such examination and the proceedings thereon, the court may cause such person, if not then so confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the person be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a), (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section [465-3(3)] 465-3(a)(3)."

SECTION 10. Section 706-604, Hawaii Revised Statutes, is amended by amending subsections (2) and (3) to read as follows:

"(2) The court shall furnish to the defendant or [his] the defendant's counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychological or psychiatric or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them."

(3) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychological or psychiatric or other medical examination shall be transmitted forthwith to the department of corrections or, when the defendant is committed to the custody of a specific institution, to such institution."

SECTION 11. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

"§706-662 Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following [definitions:] criteria:

- (1) [Persistent offender.] The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has previously been convicted of two felonies committed at different times when he was eighteen years of age or older.
- (2) [Professional criminal.] The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) [Dangerous person.] The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless the defendant has been subjected to a psychiatric [examination resulting in the conclusion that his criminal conduct has been characterized by compulsive, aggressive behavior with heedless indifference to consequences, and that such condition] or psychological evaluation which documents a significant history of dangerousness to others resulting in criminally violent conduct, and that such history makes [him] the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with Hawaii Rules of Evidence.
- (4) [Multiple offender.] The defendant is a multiple offender whose [criminality was] criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make such a finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) [Offender against elderly, handicapped, or minor under the age of eight.] The defendant is an offender against the elderly, handicapped, or minor under the age of eight whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make such a finding unless:

- (a) The defendant attempts or commits any of the following crimes: murder, a sexual offense which constitutes a felony under chapter 707, robbery, felonious assault, burglary, and kidnapping; and
- (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
 - (i) Sixty years of age or older;
 - (ii) Blind, a paraplegic, or a quadriplegic; or
 - (iii) Eight years of age or younger; and
- (c) Such disability is known or reasonably should be known to the defendant.”

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 13, 1988.)