

ACT 88

H.B. NO. 2850

A Bill for an Act Relating to Penal Responsibility and Fitness to Proceed.

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

SECTION 1. 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. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 2. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) When ordering [such] a hearing pursuant to subsection (2) 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] the 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(a)(3)."

SECTION 3. 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] the examination and the proceedings thereon, the court may cause [such person,] the defendant, 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] 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

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this section, the term “licensed psychologist” includes psychologists exempted from licensure by section 465-3(a)(3).”

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 Statutory material to be repealed is bracketed.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

SECTION 5. This Act shall take effect upon its approval.

(Approved May 27, 1992.)