

A Bill for an Act Relating to Forensic Mental Health Procedures.

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

SECTION 1. The legislature finds that under section 704-404, Hawaii Revised Statutes, when a defendant's fitness to proceed is questioned, criminal proceedings stop, and the court orders a physical or mental examination of the defendant to determine the defendant's fitness to proceed and the defendant's capacity to be subject to penal responsibility for the alleged crime. Section 704-404(4), Hawaii Revised Statutes, requires the court to order a forensic examiner to conduct an evaluation and report on several elements including fitness to stand trial, a clinical diagnosis, and penal responsibility.

Penal responsibility is a measure of the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law at the time of the alleged conduct. An evaluation of fitness includes an examination of the defendant's current cognitive capacity and state of mind, but does not always require a clinical diagnosis or an exhaustive review of the defendant's records. Evaluation of penal responsibility and clinical diagnosis are complex and time-consuming. The evaluations require a thorough record review and a comprehensive examination of the defendant's current cognitive status and the defendant's state of mind at various points in the past. Evaluations of fitness to proceed are used by the courts in each instance they are ordered, but evaluations of penal responsibility are rarely used because they are relevant only if the affirmative defense of lack of penal responsibility is asserted in criminal proceedings. Pairing the evaluations together is burdensome to the process, lengthens the time to complete the evaluation and report to the court, and generates a report that may not be used during adjudication.

An evaluation that combines determinations of fitness to proceed and penal responsibility into one evaluation raises ethical and legal concerns. Defendants who are unfit to proceed, by definition, may not have the capacity to consult with defense counsel to determine the impact of providing the examiner with information that could be potentially incriminating. The American Bar Association's Criminal Justice Mental Health Standards, Standard 7-4.4, recommends that an evaluation of a defendant's mental condition at the time of the alleged offense and capacity for penal responsibility should not be combined in an evaluation to determine fitness to stand trial unless requested by the defense or upon a showing of good cause.

Section 704-406, Hawaii Revised Statutes, does not provide a process for the reevaluation of a defendant who was found unfit to proceed but has since participated in fitness restoration services provided at either the Hawaii state hospital or in the community. Instead, courts have ordered new evaluations by a panel of three examiners for all defendants charged with felonies.

This Act establishes a procedure that requires evaluations for regained fitness to proceed by one examiner for all defendants except for defendants charged with murder in the first or second degrees, attempted murder in the first or second degrees, or class A felonies.

The purpose of this Act is to decrease the time defendants spend in state custody waiting for forensic mental health examinations and shorten the time to reach rulings on fitness to proceed and penal responsibility. This Act establishes evaluations for determining initial fitness to proceed and capacity for penal responsibility by one examiner for certain defendants, separates evaluation

for fitness to proceed and for penal responsibility, and codifies procedures for reevaluation of fitness to proceed.

SECTION 2. Chapter 704, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§704- Examination of defendant with respect to physical or mental disease, disorder, or defect excluding penal responsibility. (1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding penal responsibility, or there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may order an examination as to the defendant’s physical or mental disease, disorder, or defect at the time of the conduct alleged.

(2) The court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. In felony cases, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third examiner may be a psychiatrist, licensed psychologist, or qualified physician. One of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases, the court may appoint as examiners either a psychiatrist or a licensed psychologist. 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 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 ordered.

(3) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners, and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) For defendants charged with felonies, the examinations for fitness to proceed under section 704-404 and penal responsibility under this section shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. When the examinations are separate, the examination for penal responsibility under this section shall not be ordered more than thirty days after a finding of fitness to proceed. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

(5) The court may order the examination to occur no sooner than one hundred twenty days of a finding of unfit to proceed under section 704-404 upon a showing of good cause.

(6) The report of the examination for penal responsibility shall include the following:

- (a) A description of the nature of the examination;
 - (b) A diagnosis of the physical or mental condition of the defendant;
 - (c) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
 - (d) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and
 - (e) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.
- (7) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.
- (8) Three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.
- (9) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.
- (10) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. No further disclosure of records shall be made except as permitted by law.
- (11) All public agencies in possession of relevant medical, mental health, social, police, and juvenile records, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court, notwithstanding any other state statute.
- (12) 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.
- (13) The time during which completion of an examination pursuant to this section is pending shall be excluded in computing the time for trial commencement."

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

"§704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect[.] excluding fitness to proceed. (1) Whenever [the defendant has filed a notice of intention to rely on the defense of physical or

~~mental disease, disorder, or defect excluding responsibility, or] there is reason to doubt the defendant's fitness to proceed, [or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case,] the court may immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.~~

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the ~~[physical and mental condition of the defendant.]~~ defendant's fitness to proceed. In felony cases, the court shall appoint as examiners at least one psychiatrist and at least one licensed psychologist. The third ~~[member]~~ examiner may be a psychiatrist, licensed psychologist, or qualified physician. One of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases, the court may appoint as examiners either a psychiatrist or a licensed psychologist. 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 on an out-patient basis 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 such longer period as the court determines to be necessary for the purpose. 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 ordered.

(3) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render ~~[diagnoses and opinions]~~ an opinion upon the ~~[physical and mental condition of the defendant]~~ defendant's fitness to proceed independently from the other examiners, and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination ~~[and diagnosis].~~

(4) For defendants charged with felonies, the examinations for fitness to proceed under this section and penal responsibility under section 704- shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

~~[(4)]~~ (5) The report of the examination for fitness to proceed shall include the following:

- (a) A description of the nature of the examination;
- ~~[(b)]~~ (b) A diagnosis of the physical or mental condition of the defendant;
- ~~[(e)]~~ (b) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

- ~~[(d)]~~ An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
- ~~(e)~~ When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and
- ~~(f)~~ Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.];
- (c) An assessment of the risk of danger to the defendant or to the person or property of others for consideration and determination of the defendant's release on conditions; and
- (d) Where more than one examiner is appointed, a statement that the opinion rendered was arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

~~[(5)]~~ (6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate ~~[therein,] in the examination,~~ the report shall so state and shall include, if possible, an opinion as to whether ~~[such] the~~ unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

~~[(6)]~~ (7) Three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

~~[(7)]~~ (8) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's ~~[diagnosis or]~~ opinion.

~~[(8)]~~ (9) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other ~~[statutes,] statute,~~ and make ~~[such] the~~ records available for inspection by the examiners~~[-] in hard copy or digital format.~~ The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. No further disclosure of records shall be made except as permitted by law. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant ~~[which] that~~ have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate

a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the ~~[likelihood]~~ likely or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. ~~[Records shall not be re-disclosed except to the extent permitted by law.]~~ No further disclosure of records shall be made except as provided by law.

~~[(9)]~~ (10) All public agencies in possession of relevant medical, mental health, social, police, and juvenile records, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court, notwithstanding any other state statute.

~~[(10)]~~ (11) The compensation of persons making or assisting in the examination, other than those retained by ~~[the]~~ 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.”

SECTION 4. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

“§704-406 Effect of finding of unfitness to proceed[-] and regained fitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; provided that the commitment shall be limited in certain cases as follows:

- (a) When the defendant is charged with a petty misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than sixty days from the date the court determines the defendant lacks fitness to proceed; and
- (b) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed.

If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to ~~[the person]~~ another or risk of substantial danger to property of others, the court shall order the defendant’s release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a petty misdemeanor not involving violence or attempted violence shall continue for no longer than sixty days, and the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty

or nolo contendere made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the ~~likely~~ or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. ~~Records shall not be re-disclosed except to the extent permitted by law.~~ No further disclosure of records shall be made except as provided by law.

(2) When the defendant is released on conditions after a finding of unfitness to proceed, the department of health shall establish and monitor a fitness restoration program consistent with conditions set by the court order of release, and shall inform the prosecuting attorney of the county that charged the defendant of the program and report the defendant's compliance therewith.

~~(3)~~ When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, ~~determines, after a hearing if a hearing is requested,~~ has reason to believe that the defendant has regained fitness to proceed, [the penal proceeding shall be resumed.] for a defendant charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint three qualified examiners and may appoint in all other cases one qualified examiner, to examine and report upon the physical and mental condition of the defendant. In cases in which the defendant has been charged with murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint as examiners at least one psychiatrist and at least one licensed psychologist. The third examiner may be a psychiatrist, licensed psychologist, or qualified physician. One of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In all other cases, the one qualified examiner shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. All examiners shall be appointed from a list of certified examiners as determined by the department of health. After a hearing, if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the penal proceeding shall be resumed and the defendant shall no longer be committed to the custody of the director of health. In cases where a defendant is charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, upon the request of the prosecuting attorney or the defendant, and in consideration of information provided by the defendant's clinical team, the court may order that the defendant remain in the custody of the director of health, for good cause shown, subject to bail or until a judgment on the verdict or a finding of guilt after a plea of guilty or nolo contendere. Thereafter, the court may consider a request from the director of health to rescind its order maintaining the defendant in the director's custody, for good cause shown. As used in this section, the term "qualified physician" means a physician qualified by the court for the specific evaluation ordered. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

- (a) Order the defendant to be discharged;
- (b) Subject to the law governing the involuntary civil commitment of

persons affected by physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

- (c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on conditions the court determines necessary.

(4) An examination for regained fitness to proceed performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect, and shall include a review of records where the defendant, while under the custody of the director of health, was placed; provided that each examiner shall form and render an opinion on the defendant's regained fitness to proceed independently from the other examiners and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination.

(5) The report of the examination for regained fitness to proceed shall include the following:

- (a) A description of the nature of the examination;
- (b) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense; and
- (c) Where more than one examiner is appointed, a statement that the opinion rendered was arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(6) All other procedures as set out in section 704-404(6) through (11) shall be followed for the completion of the report of the examination for regained fitness to proceed performed under this section.

~~[(4)]~~ (7) If a defendant committed to the custody of the director of health for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be released from custody unless the defendant is subject to prosecution for other charges, in which case, unless the defendant is subject to the law governing involuntary civil commitment, the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of

health to be placed in an appropriate institution for detention, care, and treatment.

~~[(5)]~~ (8) If a defendant released on conditions for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the release on conditions order, the charge for which the defendant was released on conditions for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be discharged from the release on conditions unless the defendant is subject to prosecution for other charges or subject to the law governing involuntary civil commitment, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

- (a) Release the defendant; or
- (b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.”

SECTION 5. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) When ordering a hearing pursuant to subsection (2):

- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner 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; and
- (b) In felony cases, 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 a psychiatrist, a 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 examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or ~~[such]~~ a longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in ~~[accord]~~ accordance with section 704-404(3), ~~[(4)(a)]~~ (5)(a) and (b), ~~[(6), (7), (8), and (9)]~~ (7), (8), (9).

(10), and (11). 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 ordered.”

SECTION 6. 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 in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a 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 examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then 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 defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in ~~accord~~ accordance with section 704-404(3), ~~[(4)(a)] (5)(a)~~ and (b), ~~[(6), (7), (8), and (9)] (7), (8), (9), (10), and (11)~~. 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 ordered.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved July 1, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.