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## A BILL FOR AN ACT

RELATING TO EXAMINATIONS OF FITNESS TO PROCEED.

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

1           SECTION 1. Section 704-404, Hawaii Revised Statutes, is  
2 amended by amending subsection (2) to read as follows:  
3           "(2) Upon suspension of further proceedings in the  
4 prosecution, the court shall appoint three qualified examiners  
5 in felony cases, and one qualified examiner in nonfelony cases,  
6 to examine and report upon the defendant's fitness to proceed.  
7 In felony cases, the court shall appoint as examiners at least  
8 one psychiatrist and at least one licensed psychologist. The  
9 third examiner may be a psychiatrist, licensed psychologist, or  
10 qualified physician. One of the three examiners shall be a  
11 psychiatrist or licensed psychologist designated by the director  
12 of health. In nonfelony cases, the court may appoint as  
13 examiners either a psychiatrist or a licensed psychologist. All  
14 examiners shall be appointed from a list of certified examiners  
15 as determined by the department of health. The court, in  
16 appropriate circumstances, may appoint an additional examiner or  
17 examiners. The examination may be conducted while the defendant



1 is in custody or on release or, [~~in the court's discretion,~~  
2 when necessary [~~the court may order~~] the defendant [~~to~~] may be  
3 committed to a hospital or other suitable facility, pursuant to  
4 section 334-74 regarding transfer of residents of correctional  
5 facilities, for the purpose of the examination [~~for a period not~~  
6 ~~exceeding thirty days, or a longer period as the court~~  
7 ~~determines to be necessary for the purpose]~~. The court may  
8 direct that one or more qualified physicians or psychologists  
9 retained by the defendant be permitted to witness the  
10 examination. As used in this section, the term "licensed  
11 psychologist" includes psychologists exempted from licensure by  
12 section 465-3(a)(3) and "qualified physician" means a physician  
13 qualified by the court for the specific evaluation ordered."

14 SECTION 2. Act 231, Session Laws of Hawaii 2016, is  
15 amended by repealing section 5.

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

18 "~~(2) Upon suspension of further proceedings in the~~  
19 ~~prosecution, the court shall appoint three qualified examiners~~  
20 ~~in felony cases, and one qualified examiner in nonfelony cases,~~  
21 ~~to examine and report upon the physical and mental condition of~~



1 ~~the defendant. In felony cases, the court shall appoint at~~  
2 ~~least one psychiatrist and at least one licensed psychologist.~~  
3 ~~The third member may be a psychiatrist, licensed psychologist,~~  
4 ~~or qualified physician. One of the three shall be a~~  
5 ~~psychiatrist or licensed psychologist designated by the director~~  
6 ~~of health from within the department of health. In nonfelony~~  
7 ~~cases, the court may appoint either a psychiatrist or a licensed~~  
8 ~~psychologist. All examiners shall be appointed from a list of~~  
9 ~~certified examiners as determined by the department of health.~~  
10 ~~The court, in appropriate circumstances, may appoint an~~  
11 ~~additional examiner or examiners. The examination may be~~  
12 ~~conducted while the defendant is in custody or on release or, in~~  
13 ~~the court's discretion, when necessary the court may order the~~  
14 ~~defendant to be committed to a hospital or other suitable~~  
15 ~~facility for the purpose of the examination for a period not~~  
16 ~~exceeding thirty days, or a longer period as the court~~  
17 ~~determines to be necessary for the purpose. The court may~~  
18 ~~direct that one or more qualified physicians or psychologists~~  
19 ~~retained by the defendant be permitted to witness the~~  
20 ~~examination. As used in this section, the term "licensed~~



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1 ~~psychologist" includes psychologists exempted from licensure by~~  
2 ~~section 465-3(a)(3)."]~~

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2018.

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INTRODUCED BY: *Sen. L. Keefe*

JAN 20 2017



# H.B. NO. 555

**Report Title:**

Fitness to Proceed

**Description:**

Clarifies provisions regarding examinations of defendants' fitness to proceed in the prosecution.

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

