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# A BILL FOR AN ACT

RELATING TO CRIMINAL DEFENDANTS' 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~~  
6 ~~eases,~~] to examine and report upon the defendant's fitness to  
7 proceed. [~~In felony cases, the court shall appoint as examiners~~  
8 ~~at least one psychiatrist and at least one licensed~~  
9 ~~psychologist. The third examiner may be a psychiatrist,~~  
10 ~~licensed psychologist, or qualified physician. One of the three~~  
11 ~~examiners shall be a psychiatrist or licensed psychologist~~  
12 ~~designated by the director of health. In nonfelony cases, the~~  
13 ~~court may appoint as examiners either a psychiatrist or a~~  
14 ~~licensed psychologist. All examiners shall be appointed] An  
15 examiner shall be a psychiatrist or a licensed psychologist  
16 designated by the director of health from a list of certified  
17 examiners as determined by the department of health. The court,~~



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

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

17 "(2) Upon suspension of further proceedings in the  
18 prosecution, the court shall appoint three qualified examiners  
19 in felony cases, and one qualified examiner in nonfelony cases,  
20 to examine and report upon the defendant's fitness to proceed.  
21 In felony cases, the court shall appoint as examiners at least



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



1 psychologist" includes psychologists exempted from licensure by  
2 section 465-3(a)(3) and "qualified physician" means a physician  
3 qualified by the court for the specific evaluation ordered."

4 SECTION 3. Section 704-406, Hawaii Revised Statutes, is  
5 amended by amending subsection (3) to read as follows:

6 "(3) When the court, on its own motion or upon the  
7 application of the director of health, the prosecuting attorney,  
8 or the defendant, has reason to believe that the defendant has  
9 regained fitness to proceed, for a defendant charged with the  
10 offense of murder in the first or second degree, attempted  
11 murder in the first or second degree, [~~or a~~] class A felony,  
12 [~~the court shall appoint three qualified examiners and may~~  
13 ~~appoint in all~~] or all other cases, the court shall appoint one  
14 qualified examiner, to examine and report upon the physical and  
15 mental condition of the defendant. [~~In cases in which the~~  
16 ~~defendant has been charged with murder in the first or second~~  
17 ~~degree, attempted murder in the first or second degree, or a~~  
18 ~~class A felony, the court shall appoint as examiners at least~~  
19 ~~one psychiatrist and at least one licensed psychologist. The~~  
20 ~~third examiner may be a psychiatrist, licensed psychologist, or~~  
21 ~~qualified physician. One of the three examiners] The examiner~~



1 shall be a psychiatrist or licensed psychologist designated by  
2 the director of health [~~from within the department of health.~~  
3 ~~In all other cases, the one qualified examiner shall be a~~  
4 ~~psychiatrist or licensed psychologist designated by the director~~  
5 ~~of health from within the department of health]~~. The court, in  
6 appropriate circumstances, may appoint an additional examiner or  
7 examiners. All additional examiners shall be appointed from a  
8 list of certified examiners as determined by the department of  
9 health. After a hearing, if a hearing is requested, if the  
10 court determines that the defendant has regained fitness to  
11 proceed, the penal proceeding shall be resumed and the defendant  
12 shall no longer be committed to the custody of the director of  
13 health. In cases where a defendant is charged with the offense  
14 of murder in the first or second degree, attempted murder in the  
15 first or second degree, or a class A felony, upon the request of  
16 the prosecuting attorney or the defendant, and in consideration  
17 of information provided by the defendant's clinical team, the  
18 court may order that the defendant remain in the custody of the  
19 director of health, for good cause shown, subject to bail or  
20 until a judgment on the verdict or a finding of guilt after a  
21 plea of guilty or nolo contendere. Thereafter, the court may



1 consider a request from the director of health to rescind its  
 2 order maintaining the defendant in the director's custody, for  
 3 good cause shown. As used in this section, the term "qualified  
 4 physician" means a physician qualified by the court for the  
 5 specific evaluation ordered. If, however, the court [~~is of the~~  
 6 ~~view that so much time has elapsed~~] determines the time elapsed  
 7 since the defendant's commitment or release on conditions [~~of~~  
 8 ~~the defendant that it would be unjust to resume~~] creates an  
 9 injustice if the proceeding[~~7~~] resumed, the court may dismiss  
 10 the charge and:

- 11 (a) Order the defendant to be discharged;
- 12 (b) Subject to section 334-60.2 regarding involuntary  
 13 hospitalization criteria, order the defendant to be  
 14 committed to the custody of the director of health to  
 15 be placed in an appropriate institution for detention,  
 16 care, and treatment; or
- 17 (c) Subject to section 334-121 regarding assisted  
 18 community treatment criteria, order the defendant to  
 19 be released on conditions the court determines  
 20 necessary."



1 SECTION 4. Act 231, Session Laws of Hawaii 2016, is  
2 amended by amending section 72 to read as follows:

3 "SECTION 72. This Act shall take effect on July 1, 2016;  
4 provided that:

5 (1) Sections [57] 9[7] and 12 shall take effect on July 1,  
6 2018; and

7 (2) Section 64 shall take effect on June 30, 2016, and the  
8 amendments made to section 806-73(b), Hawaii Revised  
9 Statutes, in section 64 of this Act shall not be  
10 repealed when section 806-73(b), Hawaii Revised  
11 Statutes, is repealed and reenacted on July 1, 2016,  
12 pursuant to Act 119, Session Laws of Hawaii 2011."

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

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

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



1 ~~least one psychiatrist and at least one licensed psychologist.~~  
2 ~~The third member may be a psychiatrist, licensed psychologist,~~  
3 ~~or qualified physician. One of the three shall be a~~  
4 ~~psychiatrist or licensed psychologist designated by the director~~  
5 ~~of health from within the department of health. In nonfelony~~  
6 ~~cases, the court may appoint either a psychiatrist or a licensed~~  
7 ~~psychologist. All examiners shall be appointed from a list of~~  
8 ~~certified examiners as determined by the department of health.~~  
9 ~~The court, in appropriate circumstances, may appoint an~~  
10 ~~additional examiner or examiners. The examination may be~~  
11 ~~conducted while the defendant is in custody or on release or, in~~  
12 ~~the court's discretion, when necessary the court may order the~~  
13 ~~defendant to be committed to a hospital or other suitable~~  
14 ~~facility for the purpose of the examination for a period not~~  
15 ~~exceeding thirty days, or a longer period as the court~~  
16 ~~determines to be necessary for the purpose. The court may~~  
17 ~~direct that one or more qualified physicians or psychologists~~  
18 ~~retained by the defendant be permitted to witness the~~  
19 ~~examination. As used in this section, the term "licensed~~  
20 ~~psychologist" includes psychologists exempted from licensure by~~  
21 ~~section 465-3(a)(3)."]~~





1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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

6 SECTION 8. This Act shall take effect on July 1, 2050;  
7 provided that:

8 (1) Section 1 of this Act is repealed on July 1, 2022;

9 (2) Section 2 of this Act shall take effect on July 1,  
10 2022; and

11 (3) Section 704-406(3) shall be repealed on July 1, 2022  
12 and shall be reenacted in the form in which it read on  
13 the day before the effective date of this Act.



**Report Title:**

Criminal Defendants; Fitness to Proceed; Regaining Fitness to Proceed; Examinations

**Description:**

Provides that the court may appoint one qualified examiner instead of three, to evaluate a criminal defendant's fitness to proceed or regaining fitness to proceed in all penal cases and removes the requirement that examiner shall be from within the Department of Health. On July 1, 2022, the requirement shall be three qualified examiners for felony cases and one examiner in non-felony cases. One of the examiners shall be from within the Department of Health. (HB553 HD1)

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

