

JAN 19 2007

A BILL FOR AN ACT

RELATING TO FORENSIC EXAMINERS.

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

1 SECTION 1. The legislature finds that currently, a court
2 may order a physical or mental examination of a criminal
3 defendant pursuant to section 704-404, Hawaii Revised Statutes.
4 The forensic examination process typically takes several months
5 to complete. During this period, a pretrial defendant who may
6 have a serious mental disease or defect will be held in state
7 custody without receiving the appropriate mental health
8 treatment.

9 According to a random sampling of ninety-one pretrial
10 defendants gathered by the Hawaii Disability Rights Center in
11 December 2003, an average of seventy-eight days passed from the
12 date of arrest to the date a forensic examination was requested.
13 An average of eighteen additional days transpired before the
14 court issued an order for a forensic examination. Thereafter,
15 an average of eighty-four days passed before the forensic
16 examination report as filed and the court determined the
17 defendant's penal responsibility. The entire forensic



1 examination process averaged one hundred eighty days from motion
2 to final adjudication. Thirty-five per cent of all pretrial
3 defendants were ultimately found unfit to proceed in the
4 proceedings and were subsequently provided mental health
5 treatment by the State. During past legislative sessions, the
6 legislature considered several measures that were aimed at
7 streamlining the mental examination process.

8 The legislature further finds that the current compensation
9 paid to forensic examiners is insufficient to encourage
10 psychiatrists to perform mental health examinations. The lack
11 of available mental health professionals has contributed
12 substantially to the lengthy forensic examination process.
13 Currently, forensic examiners are paid a flat fee of \$500. This
14 fee has not increased since 1992.

15 The legislature further finds that it is neither reasonable
16 nor cost-efficient for a private practice mental health
17 professional to spend a full day traveling to, interviewing, and
18 evaluating a criminal defendant for that sum.

19 The purpose of this Act is to expedite the forensic
20 examination process by increasing the fee paid to forensic
21 examiners performing court-ordered mental health examinations of
22 criminal defendants.



1 SECTION 2. Section 704-404, Hawaii Revised Statutes, is
2 amended by amending subsection (9) to read as follows:

3 "(9) The compensation of [~~persons~~] a person making or
4 assisting in the examination, other than [~~these~~] a person
5 retained by the nonindigent defendant, who [~~are~~] is not
6 undertaking the examination upon designation by the director of
7 health as part of [~~their~~] the person's normal duties as
8 [~~employees~~] an employee of the State or a county, shall be paid
9 by the State. The fee paid to a certified forensic examiner for
10 a court-ordered mental health examination shall be \$1,000 for
11 each defendant examined, plus an amount equal to the examiner's
12 general excise tax liability for the examination and any
13 reasonable expenses incurred for inter-island travel."

14 SECTION 3. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ _____, or so
16 much thereof as may be necessary for fiscal year 2007-2008, and
17 the same sum, or so much thereof as may be necessary for fiscal
18 year 2008-2009, to increase the fee paid to forensic examiners
19 performing court-ordered mental health examinations of criminal
20 defendants.

21 The sums appropriated shall be expended by the judiciary
22 for the purposes of this Act.



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

3 SECTION 5. This Act shall take effect on July 1, 2007.

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INTRODUCED BY: *Franne Chun O'Neil*



Report Title:

Judiciary; Forensic Examiners

Description:

Increases the fee paid to a forensic examiner who performs a court-ordered mental health evaluation of a criminal defendant; appropriates funds for that purpose for fiscal years 2007-2008 and 2008-2009.

