
A BILL FOR AN ACT

RELATING TO TIME FRAMES TO REGAIN FITNESS TO PROCEED.

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

1 SECTION 1. The purpose of this Act is to amend the law
2 governing the time frames for fitness restoration for persons
3 charged with non-violent petty misdemeanors and for persons
4 charged with non-violent misdemeanors. Among the states and the
5 District of Columbia, Hawaii is one of only ten jurisdictions
6 that do not specify a specific number of days for fitness
7 restoration. Forty-one jurisdictions mandate either a fixed
8 time frame for fitness restoration (on average, ninety days for
9 misdemeanor charges), a time frame equivalent to the maximum
10 term of the sentence associated with the charge, or a
11 combination of the two (a fixed time period or the time
12 equivalent to the maximum sentence, whichever is less). These
13 forty-one jurisdictions have seen dramatic decreases in the
14 number of pretrial defendants hospitalized for fitness
15 restoration who would otherwise not meet commitment criteria for
16 hospital level of mental health care.

17 SECTION 2. Section 704-406, Hawaii Revised Statutes, is
18 amended to read as follows:



1 "§704-406 Effect of finding of unfitness to proceed. (1)

2 If the court determines that the defendant lacks fitness to
3 proceed, the proceeding against the defendant shall be
4 suspended, except as provided in section 704-407, and the court
5 shall commit the defendant to the custody of the director of
6 health to be placed in an appropriate institution for detention,
7 care, and treatment [-]; provided that the commitment shall be
8 limited in certain cases as follows:

9 (a) When the defendant is charged with a petty misdemeanor
10 not involving violence or attempted violence, the
11 commitment shall be limited to no longer than sixty
12 days from the date the court determines the defendant
13 lacks fitness to proceed; and

14 (b) When the defendant is charged with a misdemeanor not
15 involving violence or attempted violence, the
16 commitment shall be limited to no longer than one
17 hundred twenty days from the date the court determines
18 the defendant lacks fitness to proceed.

19 If the court is satisfied that the defendant may be released on
20 condition without danger to the defendant or to the person or
21 property of others, the court shall order the defendant's
22 release, which shall continue at the discretion of the court, on



1 conditions the court determines necessary [↔], provided the
2 release of a defendant charged with a petty misdemeanor not
3 involving violence or attempted violence shall continue for
4 sixty days, and the release of a defendant charged with a
5 misdemeanor not involving violence or attempted violence shall
6 continue for one hundred twenty days. A copy of the report
7 filed pursuant to section 704-404 shall be attached to the order
8 of commitment or order of conditional release on conditions.
9 When the defendant is committed to the custody of the director
10 of health for detention, care, and treatment, the county police
11 departments shall provide to the director of health and the
12 defendant copies of all police reports from cases filed against
13 the defendant which have been adjudicated by the acceptance of a
14 plea of guilty or no contest, a finding of guilt, acquittal,
15 acquittal pursuant to section 704-400, or by the entry of a plea
16 of guilty or no contest made pursuant to chapter 853, so long as
17 the disclosure to the director of health and the defendant does
18 not frustrate a legitimate function of the county police
19 departments, with the exception of expunged records, records of
20 or pertaining to any adjudication or disposition rendered in the
21 case of a juvenile, or records containing data from the United
22 States National Crime Information Center. The county police



1 departments shall segregate or sanitize from the police reports
2 information that would result in the likelihood or actual
3 identification of individuals who furnished information in
4 connection with the investigation [e~~f~~] or who were of
5 investigatory interest. Records shall not be re-disclosed
6 except to the extent permitted by law.

7 (2) When the court, on its own motion or upon the
8 application of the director of health, the prosecuting attorney,
9 or the defendant, determines, after a hearing if a hearing is
10 requested, that the defendant has regained fitness to proceed,
11 the penal proceeding shall be resumed. If, however, the court
12 is of the view that so much time has elapsed since the
13 commitment or release on conditions of the defendant that it
14 would be unjust to resume the proceeding, the court may dismiss
15 the charge and:

- 16 (a) Order the defendant to be discharged;
- 17 (b) Subject to the law governing the involuntary civil
18 commitment of persons affected by physical or mental
19 disease, disorder, or defect, order the defendant to
20 be committed to the custody of the director of health
21 to be placed in an appropriate institution for
22 detention, care, and treatment; or



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

4 (3) If a defendant committed for a limited period as
5 provided in subsection (1) is not found fit to proceed prior to
6 the expiration of the commitment, the charge for which the
7 defendant was committed for a limited period shall be dismissed.
8 Upon dismissal of the charge, the defendant shall be released
9 from custody unless the defendant is subject to prosecution for
10 other charges, or subject to the law governing involuntary civil
11 commitment the court shall order defendant's commitment to the
12 custody of the director of health to be placed in an appropriate
13 institution for detention, care and treatment. Within a
14 reasonable time following any other commitment under subsection
15 (1) the director of health shall report to the court on whether
16 the defendant presents a substantial likelihood of becoming fit
17 to proceed in the future. The court, in addition, may appoint a
18 panel of three qualified examiners in felony cases or one
19 qualified examiner in nonfelony cases to make a report. If,
20 following a report, the court determines that the defendant
21 probably will remain unfit to proceed, the court may dismiss the
22 charge and:



1 (a) Release the defendant; or

2 (b) Subject to the law governing involuntary civil
3 commitment, order the defendant to be committed to the
4 custody of the director of health to be placed in an
5 appropriate institution for detention, care, and
6 treatment.

7 (4) If a defendant released for a limited period as
8 provided in subsection (1) is not found fit to proceed prior to
9 the expiration of the commitment, the charge for which the
10 defendant was released for a limited period shall be dismissed.
11 Upon dismissal of the charge, the defendant shall be discharged
12 from the release on conditions unless the defendant is subject
13 to prosecution for other charges, or subject to the law
14 governing involuntary civil commitment the court shall order
15 defendant's commitment to the custody of the director of health
16 to be placed in an appropriate institution for detention, care
17 and treatment. Within a reasonable time following any other
18 release under subsection (1), the court shall appoint a panel of
19 three qualified examiners in felony cases or one qualified
20 examiner in nonfelony cases to report to the court on whether
21 the defendant presents a substantial likelihood of becoming fit
22 to proceed in the future. If, following the report, the court



1 determines that the defendant probably will remain unfit to
2 proceed, the court may dismiss the charge and:

3 (a) Release the defendant; or

4 (b) Subject to the law governing involuntary civil
5 commitment, order the defendant to be committed to the
6 custody of the director of health to be placed in an
7 appropriate institution for detention, care, and
8 treatment."

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

11 SECTION 4. This Act shall take effect on July 1, 2020.



Report Title:

Time Frames to Regain Fitness to Proceed

Description:

Establishes specific time frames for a commitment or release on conditions when unfit defendants are charged with petty misdemeanors (60 days), and non-violent misdemeanors (120 days) Effective July 1, 2020. (HB2573 HD1)

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