
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 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 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
20 released on condition without danger to the defendant or to the
21 person or property of others, the court shall order the
22 defendant's release, which shall continue at the discretion of



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



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

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

- 17 (a) Order the defendant to be discharged;
- 18 (b) Subject to the law governing the involuntary civil
19 commitment of persons affected by physical or mental
20 disease, disorder, or defect, order the defendant to
21 be committed to the custody of the director of health



1 to be placed in an appropriate institution for
2 detention, care, and treatment; or

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

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



1 report, the court determines that the defendant probably will
2 remain unfit to 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 (4) If a defendant who is released for a limited period as
10 provided in subsection (1) is not found fit to proceed prior to
11 the expiration of the order of release on conditions, the charge
12 for which the defendant was released for a limited period shall
13 be dismissed. Upon dismissal of the charge, the defendant shall
14 be discharged from the release on conditions unless the
15 defendant is subject to prosecution for other charges, or
16 unless the court finds that the defendant requires civil
17 commitment, in which case the court shall order defendant's
18 commitment to the custody of the director of health for
19 placement in an appropriate institution for detention, care, and
20 treatment. Within a reasonable time following any release under
21 subsection (1), the court shall appoint a panel of three
22 qualified examiners in felony cases or one qualified examiner in



1 nonfelony cases to report to the court on whether the defendant
2 presents a substantial likelihood of becoming fit to proceed in
3 the future. If, following the report, the court determines that
4 the defendant probably will remain unfit to proceed, the court
5 may dismiss the charge and:

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

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

14 SECTION 4. This Act shall take effect on July 1, 2050.

15



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 non-violent petty misdemeanors (60 days) and non-violent misdemeanors (120 days). Effective 7/1/50. (SD2)

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

