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

16 SECTION 2. Section 704-406, Hawaii Revised Statutes, is
17 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 other than an offense under chapter 707, 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 other
15 than an offense under chapter 707, the commitment
16 shall be limited to no longer than one hundred twenty
17 days from the date the court determines the defendant
18 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 other than an offense under chapter 707, shall
4 continue for no longer than sixty days, and the release of a
5 defendant charged with a misdemeanor other than an offense under
6 chapter 707, 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 release on conditions. When the defendant is committed to the
10 custody of the director of health for detention, care, and
11 treatment, the county police departments shall provide to the
12 director of health and the defendant copies of all police
13 reports from cases filed against the defendant which have been
14 adjudicated by the acceptance of a plea of guilty or no contest,
15 a finding of guilt, acquittal, acquittal pursuant to section
16 704-400, or by the entry of a plea of guilty or no contest made
17 pursuant to chapter 853, so long as the disclosure to the
18 director of health and the defendant does not frustrate a
19 legitimate function of the county police departments, with the
20 exception of expunged records, records of or pertaining to any
21 adjudication or disposition rendered in the case of a juvenile,
22 or records containing data from the United States National Crime



1 Information Center. The county police departments shall
2 segregate or sanitize from the police reports information that
3 would result in the likelihood or actual identification of
4 individuals who furnished information in connection with the
5 investigation [ef] or who were of investigatory interest.
6 Records shall not be re-disclosed except to the extent permitted
7 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 prior
8 to the expiration of the period of commitment, the charge for
9 which the defendant was committed for a limited period shall be
10 dismissed. Upon dismissal of the charge, the defendant shall be
11 released from custody unless the defendant is subject to
12 prosecution for other charges, or unless the court finds that
13 the defendant requires involuntary civil commitment, in which
14 case the court shall refer the matter for involuntary civil
15 commitment proceedings pursuant to chapter 334. Within a
16 reasonable time following any commitment under subsection (1)
17 the director of health shall report to the court on whether the
18 defendant presents a substantial likelihood of becoming fit to
19 proceed in the future. The court, in addition, may appoint a
20 panel of three qualified examiners in felony cases or one
21 qualified examiner in nonfelony cases to make a report. If,
22 following a report, the court determines that the defendant



1 probably will remain unfit to proceed, the court may dismiss the
2 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 involuntary
17 civil commitment, in which case the court shall refer the matter
18 for involuntary civil commitment proceedings pursuant to chapter
19 334. Within a reasonable time following any release under
20 subsection (1), the court shall appoint a panel of three
21 qualified examiners in felony cases or one qualified examiner in
22 nonfelony cases to report to the court on whether the defendant



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

5 (a) Release the defendant; or

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

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

13 SECTION 4. This Act shall take effect on July 1, 2025.



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) or non-violent misdemeanors (120 days). Effective July 1, 2025. (SB2726 HD2)

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

