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# 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.

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

3 **"§704-406 Effect of finding of unfitness to proceed. (1)**

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

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

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

21 If the court is satisfied that the defendant may be  
22 released on condition without danger to the defendant or to the

1 person or property of others, the court shall order the  
2 defendant's release, which shall continue at the discretion of  
3 the court, on conditions the court determines necessary[-],  
4 provided the release of a defendant charged with a petty  
5 misdemeanor not involving violence or attempted violence shall  
6 continue for no longer than sixty days, and the release of a  
7 defendant charged with a misdemeanor not involving violence or  
8 attempted violence shall continue for no longer than one hundred  
9 twenty days. A copy of the report filed pursuant to section  
10 704-404 shall be attached to the order of commitment or order of  
11 conditional release on conditions. When the defendant is  
12 committed to the custody of the director of health for  
13 detention, care, and treatment, the county police departments  
14 shall provide to the director of health and the defendant copies  
15 of all police reports from cases filed against the defendant  
16 which have been adjudicated by the acceptance of a plea of  
17 guilty or no contest, a finding of guilt, acquittal, acquittal  
18 pursuant to section 704-400, or by the entry of a plea of guilty  
19 or no contest made pursuant to chapter 853, so long as the  
20 disclosure to the director of health and the defendant does not  
21 frustrate a legitimate function of the county police  
22 departments, with the exception of expunged records, records of  
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1 or pertaining to any adjudication or disposition rendered in the  
2 case of a juvenile, or records containing data from the United  
3 States National Crime Information Center. The county police  
4 departments shall segregate or sanitize from the police reports  
5 information that would result in the likelihood or actual  
6 identification of individuals who furnished information in  
7 connection with the investigation [of] or who were of  
8 investigatory interest. Records shall not be re-disclosed  
9 except to the extent permitted by law.

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

19 (a) Order the defendant to be discharged;

20 (b) Subject to the law governing the involuntary civil  
21 commitment of persons affected by physical or mental  
22 disease, disorder, or defect, order the defendant to

1 be committed to the custody of the director of health  
2 to be placed in an appropriate institution for  
3 detention, care, and treatment; or

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

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

22 three qualified examiners in felony cases or one qualified

1 examiner in nonfelony cases to make a report. If, following a  
2 report, the court determines that the defendant probably will  
3 remain unfit to proceed, the court may dismiss the charge and:

4 (a) Release the defendant; or

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

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

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

7 (a) Release the defendant; or

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

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

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

16

**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. (SD1)

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