



GOV. MSG. NO. **1155**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 19, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

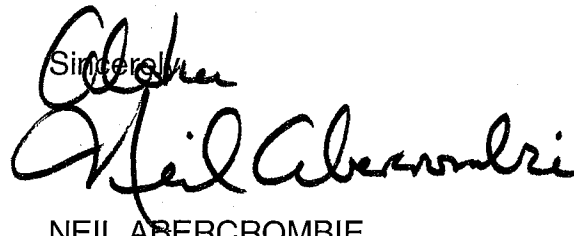
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 19, 2011, the following bill was signed into law:

HB1069 HD2 SD1

RELATING TO EFFECT OF FINDING OF
UNFITNESS TO PROCEED
ACT 053 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

MAY 19 2011

ORIGINAL

ACT 053

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1069
H.D. 2
S.D. 1

A BILL FOR AN ACT

RELATING TO EFFECT OF FINDING OF UNFITNESS 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 maximum 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:

2011-1846 HB1069 SD1 SMA.doc



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



1 disposition rendered in the case of a juvenile, or records
2 containing data from the United States National Crime
3 Information Center[-] shall not be provided. 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 [ef] 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 to the custody of the
8 director of health for a limited period pursuant to subsection
9 (1) is not found fit to proceed prior to the expiration of the
10 commitment, the charge for which the defendant was committed for
11 a limited period shall be dismissed. Upon dismissal of the
12 charge, the defendant shall be released from custody unless the
13 defendant is subject to prosecution for other charges, in which
14 case, unless the defendant is subject to the law governing
15 involuntary civil commitment, the court shall order the
16 defendant's commitment to the custody of the director of health
17 to be placed in an appropriate institution for detention, care,
18 and treatment. Within a reasonable time following any other
19 commitment under subsection (1), the director of health shall
20 report to the court on whether the defendant presents a
21 substantial likelihood of becoming fit to proceed in the future.
22 The court, in addition, may appoint a panel of three qualified



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



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

8 (a) Release the defendant; or

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

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

16 SECTION 4. This Act shall take effect on July 1, 2011.

17

APPROVED this 19 day of MAY, 2011


GOVERNOR OF THE STATE OF HAWAII

