
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:

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

2 (1) 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 commitment
11 shall be limited to no longer than sixty days from the date the
12 court determines the defendant lacks fitness to proceed; and

13 (b) When the defendant is charged with a misdemeanor not
14 involving violence or attempted violence, the commitment shall
15 be limited to no longer than one hundred twenty days from the
16 date the court determines the defendant lacks fitness to
17 proceed. If the court is satisfied that the defendant may be
18 released on condition without danger to the defendant or to the
19 person or property of others, the court shall order the
20 defendant's release, which shall continue at the discretion of
21 the court, on conditions the court determines necessary [-],
22 provided that the release on conditions of a defendant charged

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

1 information that would result in the likelihood or actual
2 identification of individuals who furnished information in
3 connection with the investigation [øf] or who were of
4 investigatory interest. Records shall not be re-disclosed
5 except to the extent permitted by law.

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

15 (a) Order the defendant to be discharged;

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

22 (c) Subject to the law governing involuntary outpatient

1 treatment, order the defendant to be released on
2 conditions the court determines necessary.

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

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1 If, following the report, the court determines that the
2 defendant probably will remain unfit to proceed, the court may
3 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 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin K. H. Ay

BY REQUEST

JAN 24 2011

Report Title:

Effect of Finding of Unfitness 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).

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT EFFECT OF FINDING OF UNFITNESS TO PROCEED.

PURPOSE: To establish specific time frames for a commitment or release on conditions when the unfit defendant is charged with a non-violent petty misdemeanor or non-violent misdemeanor. If the defendant has not regained fitness to proceed within the time frames, the court shall dismiss the charges and either civilly commit the defendant or release the defendant.

MEANS: Amend section 704-406, Hawaii Revised Statutes (HRS).

JUSTIFICATION: A criminal defendant must be able to participate meaningfully in court proceedings; in other words, be "fit to proceed" in order to go to trial or proceed with a plea bargain. Fitness refers, generally, to a defendant's ability to understand basic court proceedings, understand the details and specifics of the particular case, and work constructively with defense counsel. If a defendant is believed to be unable to do one or more of those three things, then the defendant is found "unfit to proceed" by the court. Court proceedings are typically halted temporarily, and the defendant is ordered to fitness restoration activities either in custody or while released on conditions in the community. It is expected that a combination of mental health treatment and education about court proceedings will eventually enable the defendant to participate meaningfully in court proceedings, at which time the court proceedings may be resumed.

Section 704-406, HRS, allows different placement options for fitness restoration: in the custody of the Director of the Department of Health (DOH) (Hawaii State Hospital inpatient care) or placement in the community. The determining factor in making the placement decision is the level of dangerousness of the defendant. If the court is satisfied that the person's level of dangerousness can be safely managed in the community, then the defendant may be "released on conditions," to reside at home, in a group home, at the AMHD fitness restoration facility (5 beds), or elsewhere.

Unfit defendants cannot remain in custody or released on conditions indefinitely. The leading Supreme Court case provides that the fitness restoration process may continue for a "reasonable period of time" considering the severity of the charge and the defendant's mental condition. Several states have adopted specific time frames for fitness restoration.

This measure proposes to amend the current statutory language that requires fitness restoration in a "reasonable period of time" for all grades of offenses by establishing a time frame of sixty days for fitness restoration when a non-violent petty misdemeanor is charged and one hundred-twenty days when a non-violent misdemeanor is charged.

At the end of the specific fitness restoration time frames, if the defendant remains unfit, the court dismisses the charge and releases the defendant, or proceeds with civil commitment if there is supporting evidence.

Specific time frames are expected to shorten the hospital stay of unfit defendants charged with petty misdemeanors or non-violent misdemeanors, thereby allowing the Department of Health greater control of its

inpatient census and serving a greater number of persons who are mentally ill.

Impact on the public: Treating patients at HSH costs approximately \$800 to \$900 dollars a day, per patient. Any effort that allows for a more fluid transition of patients out of the hospital setting when they no longer require hospital level of care will result in significant tax savings for the public. Additionally, prolonged stays that are clinically unnecessary place substantial burden on the hospital and have a ripple effect of denying bed space to others in the community who may require this highest level of public mental health treatment.

Impact on the department and other agencies: This measure would help DOH achieve appropriate utilization management of the highest and most expensive level of public mental health care (hospital level acute and rehabilitation treatment) at the state hospital without compromising public safety, as the individuals released would have been (a) been charged with a non-violent misdemeanor or less, and (b) been determined by hospital and court to be safe for community release.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH-495.

OTHER AFFECTED
AGENCIES: Judiciary; City and County of Honolulu Prosecutors; County Prosecutors; Department of the Attorney General; Office of the Public Defender.

EFFECTIVE DATE: Upon approval.