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# 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:

HB1069 HD2 HMS 2011-2636



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  
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 have been adjudicated by the acceptance of a  
15 plea of guilty or no contest, a finding of guilt, acquittal,  
16 acquittal pursuant to section 704-400, or by the entry of a plea  
17 of guilty or no contest made pursuant to chapter 853, so long as  
18 the disclosure to the director of health and the defendant does  
19 not 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 [øf] 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 committed to the custody of the  
7 director of health for a limited period as provided in  
8 subsection (1) is not found fit to proceed prior to 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, in which case, unless the defendant is subject to the  
14 law governing involuntary civil commitment, the court shall  
15 order the defendant's commitment to the custody of the director  
16 of health to be placed in an appropriate institution for  
17 detention, care, and treatment. Within a reasonable time  
18 following any other commitment under subsection (1) the director  
19 of 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 on conditions for a limited  
11 period as provided in subsection (1) is not found fit to proceed  
12 prior to the expiration of the release on conditions order, the  
13 charge for which the defendant was released on conditions for a  
14 limited period shall be dismissed. Upon dismissal of the  
15 charge, the defendant shall be discharged from the release on  
16 conditions unless the defendant is subject to prosecution for  
17 other charges or subject to the law governing involuntary civil  
18 commitment, in which case the court shall order the defendant's  
19 commitment to the custody of the director of health to be placed  
20 in an appropriate institution for detention, care, and  
21 treatment. Within a reasonable time following any other release  
22 under 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 January 7, 2059.



**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 for sixty days, and non-violent misdemeanors for one hundred twenty days. Effective January 7, 2059. (HB1069 HD2)

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

