

JAN 18 2012

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# A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 805, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§805-       Dismissal. (a) By prosecutor. The prosecutor,  
5 by leave of court, may dismiss a charge and the prosecution  
6 shall thereupon terminate. Such a dismissal may not be filed  
7 during the trial without the consent of the defendant.

8           (b) By court. Except in the case of traffic offenses that  
9 are not punishable by imprisonment, the court, on motion of the  
10 defendant, shall dismiss the charge, with or without prejudice  
11 in its discretion, if trial is not commenced within six months:

12           (1) From the date of arrest if bail is set or from the  
13 filing of the charge, whichever is sooner, on any  
14 offense based on the same conduct or arising from the  
15 same criminal episode for which the arrest or charge  
16 was made;



1        (2) From the date of re-arrest or re-filing of the charge,  
2                    in cases where an initial charge was dismissed upon  
3                    motion of the defendant; or

4        (3) From the date of mistrial, order granting a new trial  
5                    or remand, in cases where such events require a new  
6                    trial.

7        Subsection (b) (1) and (b) (2) shall not be applicable to any  
8        offense for which the arrest was made or the charge was filed  
9        before the effective date of this Act.

10        (c) Excluded periods. The following periods shall be  
11        excluded in computing the time for trial commencement:

12        (1) Periods that delay the commencement of trial and are  
13                    caused by collateral or other proceedings concerning  
14                    the defendant, including but not limited to penal  
15                    irresponsibility examinations and periods during which  
16                    the defendant is incompetent to stand trial, pretrial  
17                    motions, interlocutory appeals, and trials of other  
18                    charges;

19        (2) Periods that delay the commencement of trial and are  
20                    caused by congestion of the trial docket when the  
21                    congestion is attributable to exceptional  
22                    circumstances;



1       (3) Periods that delay the commencement of trial and are  
2       caused by a continuance granted at the request or with  
3       the consent of the defendant or defendant's counsel;

4       (4) Periods that delay the commencement of trial and are  
5       caused by a continuance granted at the request of the  
6       prosecutor if:

7       (A) The continuance is granted because of the  
8       unavailability of evidence material to the  
9       prosecution's case, when the prosecutor has  
10       exercised due diligence to obtain such evidence  
11       and there are reasonable grounds to believe that  
12       such evidence will be available at a later date;

13       or

14       (B) The continuance is granted to allow the  
15       prosecutor additional time to prepare the  
16       prosecutor's case and additional time is  
17       justified because of the exceptional  
18       circumstances of the case;

19       (5) Periods that delay the commencement of trial and are  
20       caused by the absence or unavailability of the  
21       defendant;



1       (6) The period between a dismissal of the charge by the  
2       prosecutor to the time of arrest or filing of a new  
3       charge, whichever is sooner, for the same offense or  
4       an offense required to be joined with that offense;

5       (7) A reasonable period of delay when the defendant is  
6       joined for trial with a codefendant as to whom the  
7       time for trial has not run and there is good cause for  
8       not granting a severance; and

9       (8) Other periods of delay for good cause.

10       (d) Per se excludable and includable periods of time for  
11 purposes of subsection (c) (1).

12       (1) For purposes of subsection (c) (1), the period of time,  
13       from the filing through the prompt disposition of the  
14       following motions filed by a defendant, shall be  
15       deemed to be periods of delay resulting from  
16       collateral or other proceedings concerning the  
17       defendant: motions to dismiss, to suppress, for  
18       voluntariness hearing heard before trial, to sever  
19       counts or defendants, for disqualification of the  
20       prosecutor, for withdrawal of counsel including the  
21       time period for appointment of new counsel if so  
22       ordered, for mental examination, to continue trial,



1 for transfer to the circuit court, for remand from the  
2 circuit court, for change of venue, to secure the  
3 attendance of a witness by a material witness order,  
4 and to secure the attendance of a witness from without  
5 the state.

6 (2) For purposes of subsection (c) (1), the period of time,  
7 from the filing through the prompt disposition of the  
8 following motions or court papers, shall be deemed not  
9 to be excluded in computing the time for trial  
10 commencement: notice of alibi, requests/motions for  
11 discovery, and motions in limine, for voluntariness  
12 hearing heard at trial, for bail reduction, for  
13 release pending trial, for bill of particulars, to  
14 strike surplusage from the charge, for return of  
15 property, for discovery sanctions, for litigation  
16 expenses and for depositions.

17 (3) The criteria provided in subsection (c) shall be  
18 applied to motions that are not listed in subsection  
19 (d) (1) and (d) (2) in determining whether the  
20 associated periods of time may be excluded in  
21 computing the time for trial commencement.

22 (e) This section shall not apply to section 709-906."



1 SECTION 2. Chapter 806, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§806- Dismissal. (a) By prosecutor. The prosecutor  
5 may, by leave of court, file a dismissal of a charge and the  
6 prosecution shall thereupon terminate. Such a dismissal may not  
7 be filed during the trial without the consent of the defendant.

8 (b) By court. Except in the case of traffic offenses that  
9 are not punishable by imprisonment, the court, on motion of the  
10 defendant, shall dismiss the charge, with or without prejudice  
11 in its discretion, if trial is not commenced within 6 months:

12 (1) From the date of arrest if bail is set or from the  
13 filing of the charge, whichever is sooner, on any  
14 offense based on the same conduct or arising from the  
15 same criminal episode for which the arrest or charge  
16 was made;

17 (2) From the date of re-arrest or re-filing of the charge,  
18 in cases where an initial charge was dismissed upon  
19 motion of the defendant; or

20 (3) From the date of mistrial, order granting a new trial  
21 or remand, in cases where such events require a new  
22 trial.



1 Subsection (b)(1) and (b)(2) shall not be applicable to any  
2 offense for which the arrest was made or the charge was filed  
3 before the effective date of this Act.

4 (c) Excluded periods. The following periods shall be  
5 excluded in computing the time for trial commencement:

6 (1) Periods that delay the commencement of trial and are  
7 caused by collateral or other proceedings concerning  
8 the defendant, including but not limited to penal  
9 irresponsibility examinations and periods during which  
10 the defendant is incompetent to stand trial, pretrial  
11 motions, interlocutory appeals, and trials of other  
12 charges;

13 (2) Periods that delay the commencement of trial and are  
14 caused by congestion of the trial docket when the  
15 congestion is attributable to exceptional  
16 circumstances;

17 (3) Periods that delay the commencement of trial and are  
18 caused by a continuance granted at the request or with  
19 the consent of the defendant or defendant's counsel;

20 (4) Periods that delay the commencement of trial and are  
21 caused by a continuance granted at the request of the  
22 prosecutor if:



- 1           (A) The continuance is granted because of the  
2           unavailability of evidence material to the  
3           prosecution's case, when the prosecutor has  
4           exercised due diligence to obtain such evidence  
5           and there are reasonable grounds to believe that  
6           such evidence will be available at a later date;  
7           or  
8           (B) The continuance is granted to allow the  
9           prosecutor additional time to prepare the  
10           prosecutor's case and additional time is  
11           justified because of the exceptional  
12           circumstances of the case;  
13           (5) Periods that delay the commencement of trial and are  
14           caused by the absence or unavailability of the  
15           defendant;  
16           (6) The period between a dismissal of the charge by the  
17           prosecutor to the time of arrest or filing of a new  
18           charge, whichever is sooner, for the same offense or  
19           an offense required to be joined with that offense;  
20           (7) A reasonable period of delay when the defendant is  
21           joined for trial with a codefendant as to whom the





1           time for trial has not run and there is good cause for  
2           not granting a severance; and

3           (8) Other periods of delay for good cause.

4           (d) Per se excludable and includable periods of time for  
5 purposes of subsection (c) (1).

6           (1) For purposes of subsection (c) (1), the period of time,  
7           from the filing through the prompt disposition of the  
8           following motions filed by a defendant, shall be  
9           deemed to be periods of delay resulting from  
10           collateral or other proceedings concerning the  
11           defendant: motions to dismiss, to suppress, for  
12           voluntariness hearing heard before trial, to sever  
13           counts or defendants, for disqualification of the  
14           prosecutor, for withdrawal of counsel including the  
15           time period for appointment of new counsel if so  
16           ordered, for mental examination, to continue trial,  
17           for transfer to the circuit court, for remand from the  
18           circuit court, for change of venue, to secure the  
19           attendance of a witness by a material witness order,  
20           and to secure the attendance of a witness from without  
21           the state.



1        (2) For purposes of subsection (c)(1), the period of time,  
2        from the filing through the prompt disposition of the  
3        following motions or court papers, shall be deemed not  
4        to be excluded in computing the time for trial  
5        commencement: notice of alibi, requests for discovery,  
6        motions for discovery, and motions in limine, for  
7        voluntariness hearing heard at trial, for bail  
8        reduction, for release pending trial, for bill of  
9        particulars, to strike surplusage from the charge, for  
10       return of property, for discovery sanctions, for  
11       litigation expenses and for depositions.

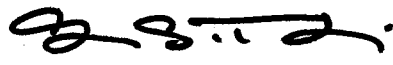
12       (3) The criteria provided in subsection (c) shall be  
13       applied to motions that are not listed in paragraphs  
14       (d)(1) and (d)(2) in determining whether the  
15       associated periods of time may be excluded in  
16       computing the time for trial commencement.

17       (e) This section shall not apply to section 709-906."

18       SECTION 3. New statutory material is underscored.

19       SECTION 4. This Act shall take effect on July 1, 2012.

20

INTRODUCED BY:   
By Request

# S.B. NO. 2061

**Report Title:**

Criminal Procedure; Dismissal; Abuse of Family or Household Member; Honolulu Prosecutor's Package

**Description:**

Codifies dismissals pursuant to Rule 48, Hawaii rules of penal procedure. Exempts cases for abuse of family or household members charges from the dismissal rule.

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

