
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 Paragraphs (1) and (2) shall not apply to any offense for which
8 the arrest was made or the charge was filed before the effective
9 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; provided that:

19 (A) The period of time, from the filing through the
20 prompt disposition of the following motions filed
21 by a defendant, shall be deemed to be periods of
22 delay resulting from collateral or other



1 proceedings concerning the defendant: motions to
2 dismiss, to suppress, for voluntariness hearing
3 heard before trial, to sever counts or
4 defendants, for disqualification of the
5 prosecutor, for withdrawal of counsel including
6 the time period for appointment of new counsel if
7 so ordered, for mental examination, to continue
8 trial, for transfer to the circuit court, for
9 remand from the circuit court, for change of
10 venue, to secure the attendance of a witness by a
11 material witness order, and to secure the
12 attendance of a witness from without the State;
13 and

14 (B) The period of time, from the filing through the
15 prompt disposition of the following motions or
16 court papers, shall not be excluded in computing
17 the time for trial commencement: notice of
18 alibi, requests or motions for discovery, and
19 motions in limine, for voluntariness hearing
20 heard at trial, for bail reduction, for release
21 pending trial, for bill of particulars, to strike
22 surplusage from the charge, for return of



1 property, for discovery sanctions, for litigation
2 expenses, and for depositions;

3 (2) Periods that delay the commencement of trial and are
4 caused by congestion of the trial docket when the
5 congestion is attributable to exceptional
6 circumstances;

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

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

13 (A) The continuance is granted because of the
14 unavailability of evidence material to the
15 prosecution's case, when the prosecutor has
16 exercised due diligence to obtain such evidence
17 and there are reasonable grounds to believe that
18 such evidence will be available at a later date;
19 or

20 (B) The continuance is granted to allow the
21 prosecutor additional time to prepare the
22 prosecutor's case and additional time is



1 justified because of the exceptional
2 circumstances of the case;

3 (5) Periods that delay the commencement of trial and are
4 caused by the absence or unavailability of the
5 defendant;

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

10 (7) A reasonable period of delay when the defendant is
11 joined for trial with a co-defendant as to whom the
12 time for trial has not run and there is good cause for
13 not granting a severance; and

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

15 (d) The criteria in subsection (c) shall be applied to
16 motions other than motions listed in subsection (c)(1)(A) and
17 (B) in determining whether the associated periods of time may be
18 excluded in computing the time for trial commencement.

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

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



1 "§806- Dismissal. (a) By prosecutor. The prosecutor
2 may, by leave of court, file a dismissal of a charge and the
3 prosecution shall thereupon terminate. Such a dismissal may not
4 be filed during the trial without the consent of the defendant.

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

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

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

17 (3) From the date of mistrial, order granting a new trial
18 or remand, in cases where such events require a new
19 trial.

20 Paragraphs (1) and (2) shall not apply to any offense for which
21 the arrest was made or the charge was filed before the effective
22 date of this Act.



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

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

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



1 venue, to secure the attendance of a witness by a
2 material witness order, and to secure the
3 attendance of a witness from without the State;
4 and

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

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

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



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

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

10 or

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

16 (5) Periods that delay the commencement of trial and are
17 caused by the absence or unavailability of the
18 defendant;

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



1 (7) A reasonable period of delay when the defendant is
2 joined for trial with a co-defendant as to whom the
3 time for trial has not run and there is good cause for
4 not granting a severance; and

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

6 (d) The criteria in subsection (c) shall be applied to
7 motions other than motions listed in subsection (c)(1)(A) and
8 (B) in determining whether the associated periods of time may be
9 excluded in computing the time for trial commencement.

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

11 SECTION 3. New statutory material is underscored.

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



Report Title:

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

Description:

Codifies dismissals pursuant to Hawaii rules of penal procedure. Provides certain exceptions, including for cases for abuse of family or household members charges, for the calculation of trial commencement deadline under the dismissal rule. Effective 07/01/50. (SD1)

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

