
A BILL FOR AN ACT

RELATING TO THE ADMINISTRATION OF JUSTICE.

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

1 SECTION 1. The legislature finds that for those defendants
2 who commit non-violent class C felonies but are found unfit to
3 proceed, there is no time limit as to how long these defendants
4 must remain in the custody or under the supervision of the
5 department of health. As such, these defendants could end up
6 being under the custody and supervision of the department of
7 health for a longer period than the term of incarceration would
8 have been if they were convicted of the non-violent class C
9 felony.

10 The legislature further finds that there is a shortage of
11 personnel in the department of health, as well as a severe
12 shortage of licensed psychiatrists and mental health social
13 workers. As such, care must be taken to ensure that the State's
14 finite resources are used to provide the utmost care and
15 supervision for those defendants who have a propensity for
16 violent behavior due to mental illness rather than keeping non-
17 violent defendants committed longer than necessary.



1 The legislature further finds that in 2016, based upon the
2 recommendation of the Penal Code Review Committee, the
3 legislature passed Act 231, Session Laws of Hawaii 2016, which,
4 in part, limited the period of conditional release to one year
5 in all non-felony cases. A similar section should be added to
6 chapter 704, Hawaii Revised Statutes, to limit the period of
7 conditional release to one hundred eighty days in all non-
8 violent class C felony cases.

9 The purpose of this Act is to limit to one hundred eighty
10 days:

- 11 (1) The period of commitment to the department of health
12 of defendants charged with class C felonies that do
13 not involve violence or attempted violence; and
- 14 (2) The period of conditional release granted to
15 defendants charged with class C felonies that do not
16 involve violence or attempted violence.

17 SECTION 2. Chapter 704, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§704- Conditional release; duration limited in non-
21 violent class C felony cases. For any defendant charged with a



1 class C felony not involving violence or attempted violence and
 2 granted conditional release pursuant to section 704-411(1)(b),
 3 704-412, 704-414, or 704-415, the period of conditional release
 4 shall not exceed one hundred eighty days."

5 SECTION 3. Section 704-406, Hawaii Revised Statutes, is
 6 amended by amending subsection (1) to read as follows:

7 "(1) If the court determines that the defendant lacks
 8 fitness to proceed, the proceeding against the defendant shall
 9 be suspended, except as provided in section 704-407, and the
 10 court shall commit the defendant to the custody of the director
 11 of health to be placed in an appropriate institution for
 12 detention, care, and treatment; provided that the commitment
 13 shall be limited in certain cases as follows:

14 (a) When the defendant is charged with a petty misdemeanor
 15 not involving violence or attempted violence, the
 16 commitment shall be limited to no longer than sixty
 17 days from the date the court determines the defendant
 18 lacks fitness to proceed; [and]

19 (b) When the defendant is charged with a misdemeanor not
 20 involving violence or attempted violence, the
 21 commitment shall be limited to no longer than one



1 hundred twenty days from the date the court determines
2 the defendant lacks fitness to proceed[-]; and

3 (c) When a defendant is charged with a class C felony not
4 involving violence or attempted violence, the
5 commitment shall be limited to no longer than one
6 hundred eighty days from the date the court determines
7 the defendant lacks fitness to proceed.

8 If the court is satisfied that the defendant may be released on
9 conditions without danger to the defendant or to another or risk
10 of substantial danger to property of others, the court shall
11 order the defendant's release, which shall continue at the
12 discretion of the court, on conditions the court determines
13 necessary; provided that the release on conditions of a
14 defendant charged with a petty misdemeanor not involving
15 violence or attempted violence shall continue for no longer than
16 sixty days, [~~and~~] the release on conditions of a defendant
17 charged with a misdemeanor not involving violence or attempted
18 violence shall continue for no longer than one hundred twenty
19 days[-]; provided further that the release on conditions of a
20 defendant charged with a class C felony not involving violence
21 or attempted violence shall continue for no longer than one



1 hundred eighty days. A copy of all reports filed pursuant to
2 section 704-404 shall be attached to the order of commitment or
3 order of release on conditions that is provided to the
4 department of health. When the defendant is committed to the
5 custody of the director of health for detention, care, and
6 treatment, the county police departments shall provide to the
7 director of health and the defendant copies of all police
8 reports from cases filed against the defendant that have been
9 adjudicated by the acceptance of a plea of guilty or nolo
10 contendere, a finding of guilt, acquittal, acquittal pursuant to
11 section 704-400, or by the entry of a plea of guilty or nolo
12 contendere made pursuant to chapter 853; provided that the
13 disclosure to the director of health and the defendant does not
14 frustrate a legitimate function of the county police
15 departments; provided further that expunged records, records of
16 or pertaining to any adjudication or disposition rendered in the
17 case of a juvenile, or records containing data from the United
18 States National Crime Information Center shall not be provided.
19 The county police departments shall segregate or sanitize from
20 the police reports information that would result in the likely
21 or actual identification of individuals who furnished



1 information in connection with the investigation or who were of
2 investigatory interest. No further disclosure of records shall
3 be made except as provided by law."

4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2020.

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INTRODUCED BY:

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H.B. NO. 2068

Report Title:

Non-violent Class C Felony; Lack of Fitness to Proceed;
Commitment; Conditional Release

Description:

Limits DOH commitment to 180-days for those defendants charged with a non-violent class C felony and found to be unfit to proceed under chapter 704, HRS. Limits to 180-days the period of conditional release granted to defendants charged with a non-violent class C felony.

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