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# 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 conditional release granted to  
12 defendants charged with class C felonies that do not  
13 involve violence or attempted violence; and  
14           (2) The period of commitment to the department of health  
15 of defendants charged with class C felonies that do  
16 not 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 charged  
17 with a misdemeanor not involving violence or attempted violence  
18 shall continue for no longer than one hundred twenty days[-];  
19 provided further that the release on conditions of a defendant  
20 charged with a class C felony not involving violence or  
21 attempted violence shall continue for no longer than one hundred



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



1 connection with the investigation or who were of investigatory  
2 interest. No further disclosure of records shall be made except  
3 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, 2050.



**Report Title:**

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

**Description:**

Limits DOH commitment to one hundred eighty 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 one hundred eighty days the period of conditional release granted to defendants charged with a non-violent class C felony. Effective 7/1/2050. (HD1)

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

