

# **CHAPTER 704**

## **FITNESS TO PROCEED AND PENAL RESPONSIBILITY**

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# Fitness vs. Penal Responsibility

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## FITNESS TO PROCEED

“current cognitive capacity and state of mind”

No person who as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

HRS § 704-403

## PENAL RESPONSIBILITY

“ at the time of the alleged conduct”

A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law.

HRS § 704-400(1)

## **FITNESS TO PROCEED HRS §704-404**

### **Examination of defendant with respect to physical or mental disease, disorder, or defect excluding fitness to proceed.**

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Reason to doubt the defendant's fitness to proceed? Suspend all further proceedings... shall appoint examiner(s) to examine and report upon the defendant's fitness to proceed

### **FELONY**

Three (3) Qualified Examiners

1. Psychiatrist, licensed psychologist, or qualified physician
2. Psychiatrist, licensed psychologist, or qualified physician
3. Psychiatrist / Licensed Psychologist / Qualified Physician

1 of 3 'designated by the Director of Health'

### **NONFELONY**

One (1) Qualified Examiner

1. Psychiatrist / Licensed Psychologist / Qualified Physician - designated by the Director of Health

# Fitness to Proceed: Dusky Criteria and HRS

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**Dusky Standards:** Sufficient present ability to consult with counsel with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against them.

**704-403 Physical or mental disease, disorder, or defect excluding fitness to proceed:** No person who as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

# Fitness Breakdown

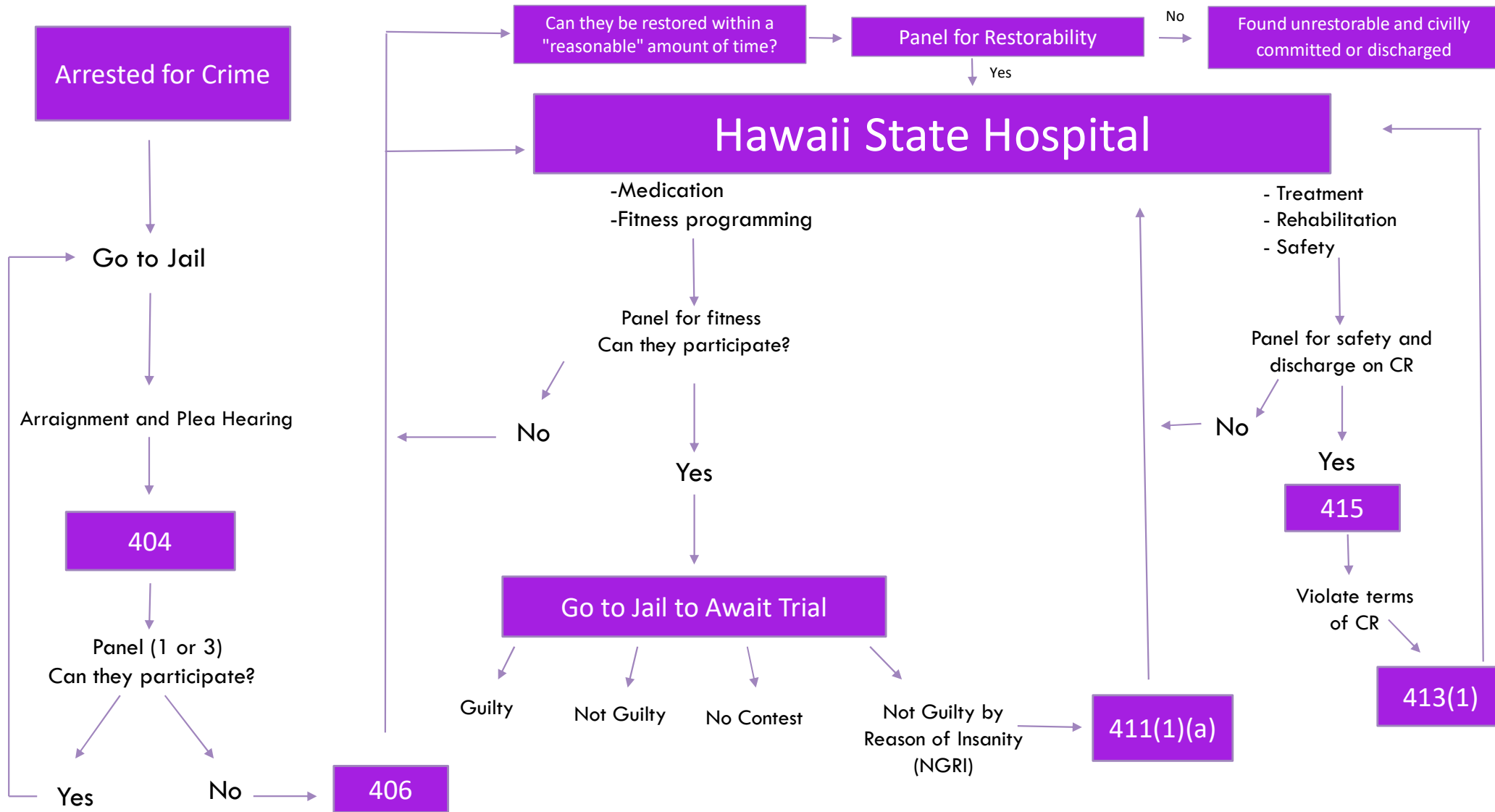
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## KNOWLEDGE PRONG

1. Know the charges against you
  - What are you accused of? (What did they say you did?)
2. Know the range of possible penalties
  - Misdemeanor v. Felony
  - Jail time
  - Fines/restitution
  - Probation/parole
3. Know about the court
  - Who is in the court? What is his/her role?
  - What are the different pleas and what do they mean?
    - Guilty
    - Not guilty
    - No contest
    - NGRI

## APPRECIATION PRONG

4. Be able to communicate with your attorney
  - Trust that your attorney has your best interest
  - Be able to communicate in a coherent, organized manner
5. Be able to behave in court
  - Know courtroom etiquette
  - Be dressed and groomed appropriately
6. Be able to testify (if necessary)
  - Understand your role as a witness and be able to speak in an organized and coherent manner



# HSH by the Numbers (current census: 379 as of 8/13/25)

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## PETTY MISDEMEANANTS

### 18 Petty Misdemeanants

- 421: 5
- 406: 4
- 411/413: 5
- MH6: 4

### Range (Length of Stay)

- 2012 – 2025
  - 8 patients have been hospitalized for over 1 year

## MISDEMEANANTS

### 64 Misdemeanants

- 404: 3
- 406: 34
- 411/413: 15
- MH6: 12

### Range (Length of Stay)

- 1997 – 2025
  - 22 patients have been hospitalized over 1 year
  - 17 patients have been hospitalized over 2 years

