

**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 619, SD1, RELATING TO ADVANCED PRACTICE REGISTERED NURSES.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 2, 2021

**TIME:** 9:35 a.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Kory W. Young,  
Deputy Attorney General, at 586-1160)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill but opposes its passage at this time.

The purpose of the bill is to allow certain advanced practice registered nurses (APRNs) to serve as court appointed examiners of criminal defendants in fitness to proceed and penal responsibility examinations.

The Department recommends that this matter be deferred until the impact of the changes mandated by Act 26, Session Laws 2020 (Act 26), to sections 704-404, 704-406, 704-407.5, 704-411, and 704-414, Hawaii Revised Statutes (HRS), can be properly evaluated, and to allow the parties who would be substantially affected by the bill, including the Department of Health, the Judiciary, the county Prosecutor's Offices, the Office of the Public Defender, and the criminal defense bar, to fully examine the ramifications of the bill on legal proceedings.

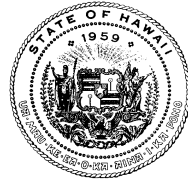
Act 26 implemented changes to sections 704-404, 704-406, 704-407.5, 704-411, and 704-414, HRS, to streamline the handling of defendants who may be unfit, as well as defendants who may not be penally responsible for their criminal conduct. Act 26 also provided the Courts with greater flexibility when appointing panel examiners to address concerns regarding the availability and accessibility of examiners to defendants. Additionally, through its amendments to section 704-406, HRS, Act 26

created a process that would allow certain defendants to be committed to the custody of the Director of Health for detention, assessment, care, and treatment, and diversion from the criminal justice system, thereby reducing the strain their cases place on the criminal courts.

The provisions of Act 26 have only been in effect since September of 2020, and due to the COVID-19 Pandemic, it has not been possible to gauge their impact on the courts or the mental health system under more normal circumstances. Until the effects of Act 26 can be properly evaluated, making additional changes to sections 704-404, 704-407.5, 704-411, and 704-414, HRS, is premature.

Even if it is determined, after evaluating the impacts of the significant changes of Act 26, that further changes to sections 704-404, 704-407.5, 704-411, and 704-414, HRS, are warranted, more discussion among the Department of Health, the Judiciary, the county Prosecutor's Offices, the Office of the Public Defender, and the criminal defense bar is necessary to determine if these statutes should be further expanded to allow APRNs to conduct forensic examinations on penal responsibility and fitness.

The Department respectfully requests that this measure be deferred.



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
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**WRITTEN  
TESTIMONY ONLY**

**Testimony in OPPOSITION to S.B. 619 S.D. 1  
RELATING TO ADVANCED PRACTICE REGISTERED NURSES**

SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

Hearing Date: 3/2/2021

Hearing Time: 9:35 a.m.

1 **Department Position:** The Department of Health (“Department”) opposes this measure, offers  
2 comments, and respectfully requests that this measure be deferred.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the  
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a  
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,  
6 private and community resources. Through the BHA, the Department is committed to carrying  
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and  
8 person-centered.

9 The Department agrees that Advanced Practice Registered Nurses (APRNs) are an  
10 integral part of the continuum of care for behavioral health and are an important part of the  
11 BHA’s Adult Mental Health Division’s (AMHD) multi-interdisciplinary team approach with  
12 respect to the care and treatment of individuals diagnosed with a serious mental illness (SMI).  
13 We want to increase their role in areas where they may provide direct clinical care services  
14 including, for example, as rotating staff providing coverage as the hospital Medical Officer of  
15 the Day. In addition, the Department supports the increased utilization of APRNs in rural areas  
16 where access to care and treatment may be more difficult for those with SMI.

1           The AMHD is tasked with maintaining a qualified group of professionals, in both the  
2 public and private sectors, whose responsibility it is to provide expert opinions to the courts  
3 with respect to Chapter 704 (forensic evaluations), Hawaii Revised Statutes (HRS).

4           The proposed language in this measure indicates that the intent of this measure is to  
5 improve patient access to medical care by allowing nurses to complete forensic evaluations.  
6 The Department acknowledges that, while forensic evaluation may lead to treatment, the  
7 evaluation itself is not considered treatment or medical care. The work of forensic examination  
8 under Chapter 704, HRS is, by its nature, intended to provide an independent, expert opinion to  
9 the court. Additionally, examiners do not assess “patients” but, rather, “defendants.” Access  
10 to Assisted Community Treatment is, also, not impacted by the length of time it takes for an  
11 evaluation to be completed. These are two separate issues.

12           Further, it should be recognized that it is important to maintain national standards and  
13 best practices when it comes to upholding the responsibility the statute bestows upon the  
14 AMHD; those who conduct evaluations as described under Chapter 704, HRS, must be familiar  
15 with pertinent forensic case law, legal standards, and ethics specific to forensic assessment.

16           We appreciate and thank the legislature for its commitment to improving the  
17 coordination of behavioral health services statewide. In September 2020, Act 026 Session Laws  
18 2020 (H.B. 1620 HD2 SD2) removed the requirement to include psychiatrists as a member of  
19 the three-panel examination process. The direct impact of this law eliminated issues with  
20 available panel examiners and there are no existing capacity issues for the completion of  
21 forensic evaluations. As such, this measure is not necessary as it does not address an existing  
22 need for changes to the Chapter 704 panel process.

23           As previously stated, we agree that APRNs have an important role as members of multi-  
24 interdisciplinary teams and should be allowed to work within their scope of practice. We

1 respectfully request that this measure be deferred to allow the legislature's work from last  
2 session, through Act 026, to continue to be assessed and monitored.

3 **Offered Amendments:** None.

4 Thank you for the opportunity to testify on this measure.

5 **Fiscal Implications:** Undetermined.

## **Testimony of the Board of Nursing**

**Before the  
Senate Committee on Judiciary  
Tuesday, March 2, 2021  
9:35 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 619, S.D. 1, RELATING TO ADVANCED PRACTICE REGISTERED NURSES**

### **WRITTEN TESTIMONY ONLY**

Chair Rhoads, and Members of the Committee:

My name is Lee Ann Teshima, and I am the Executive Officer of the Board of Nursing (Board). The Board appreciates the intent of and offers comments on this bill.

The purpose of this bill is to amend provisions concerning fitness to proceed examinations in criminal proceedings to specify circumstances in which qualified advanced practice registered nurses (APRNs) or APRNS with prescriptive authority who hold an accredited national certification in an APRN psychiatric specialization may participate.

The Board appreciates the bill's intent to remove barriers for the practice of APRNs and to provide greater access to health care for Hawaii residents, especially those who reside in rural areas or on the neighbor islands.

For the Committee's information, APRNs are recognized as primary care providers who may practice independently based on their practice specialty, which includes psychiatric mental health. Under Hawaii Revised Statutes section 457-8.8, APRNS are "authorized to sign, certify, or endorse all documents relating to health care within their scope of practice provided for their patients[.]" In addition, an APRN's education and training include but are not limited to: (1) a graduate-level degree in nursing; (2) national certification that requires additional education and training; and (3) passage of a national board examination.

Thank you for the opportunity to testify on this bill.



## THE QUEEN'S HEALTH SYSTEMS

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To: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members, Senate Committee on Judiciary

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: March 2, 2021

Re: Support for SB619, SD1: Relating to Advanced Practice Registered Nurses

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The Queen's Health Systems (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 1,500 affiliated physicians and providers statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide testimony in support of SB619, SD1, relating to advanced practice registered nurses. This bill would amend existing provisions concerning fitness to proceed examinations in criminal proceedings to include qualified advanced practice registered nurses or advanced practice registered nurses with prescriptive authority who hold an accredited national certification in an advanced practice registered nurse psychiatric specialization.

Queen's supports this measure because we believe it is important that all qualified providers, like APRNs, are able to exercise their full scope of practice and assist in these situations. There are currently about 120 APRNs working at Queen's and we expect this number to increase in order to meet the community need for services.

Thank you for allowing Queen's to testify in support of SB619, SD1.

*The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.*



**Written Testimony Presented Before the  
COMMITTEE ON JUDICIARY**

**DATE: Tuesday, March 02, 2021**

**TIME: 9:35 am.**

**PLACE: VIA VIDEOCONFERENCE**

**By**

**Laura Reichhardt, APRN, AGPCNP-BC  
Director, Hawai'i State Center for Nursing  
University of Hawai'i at Mānoa**

**Testimony in Strong Support for SB 619, SD1**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, thank you for the opportunity for the Hawai'i State Center for Nursing to provide testimony in strong support of this measure. This measure seeks to amend provisions concerning fitness to proceed examinations in criminal proceedings to include qualified advanced practice registered nurses or advanced practice registered nurses with prescriptive authority who hold an accredited national certification in an advanced practice registered nurse psychiatric specialization.

Hawai'i adopted the national best practices for APRN scope of practice, the APRN Consensus Model, which states that licensure, accreditation, and certification combined provide guidance on an APRN's scope of practice. As such, in accordance with their license, accreditation, certification, and education, Chapter 89 – Nurses of the Hawai'i Administrative Rules (HAR) states that APRNs may order, interpret, or perform diagnostic, screening, and therapeutic examinations, tests, and procedures (HAR 16-89-81 Practice Specialties). In addition, APRNs must adhere to professional conduct as defined in HAR Chapter 89 – Nurses which prohibits nurses from performing nursing techniques or procedures without proper education and training (HAR 16-89-60 Types of Unprofessional Conduct) (6)(E). These provisions create a safe practice environment with clear standards to ensure high quality and safe care by requiring an APRN to complete all necessary education and training needed to ensure competence in performing skills, including those addressed in this measure. Engaging in education and training is consistent with the professional and regulatory expectation that nurses engage in lifelong learning to ensure that they are providing safe, quality, evidence-based care. Additional education needed for specific roles, including Forensic Nursing, are available.

The Hawai'i State Center for Nursing APRN Policy and Practice Taskforce, a group of APRN leaders practicing across the islands, identified the laws included in this measure as true barriers to providing care to people of Hawai'i and supporting the severely mentally ill population of Hawai'i. Specifically, after following up on the progress and outcomes of the

*The mission of the Hawai'i State Center for Nursing is that through collaborative partnerships, the Center provides accurate nursing workforce data for planning, disseminates nursing knowledge to support excellence in practice and leadership development; promotes a diverse workforce and advocates for sound health policy to serve the changing health care needs of the people of Hawai'i.*



additions of APRNs to the Assisted Community Treatment (Act 88, SPH 2017), this group was informed that there was limited improvement in expanded access to the Assisted Community Treatment program due to a deficit of forensic examiners to refer them into this program. There are post-graduate nursing education programs in forensic nursing and an International Association of Forensic Nurses (<https://www.forensicnurses.org/>) which establish professional standards for this sub-specialty of nursing.

Additionally, the State achieved significant improvements in expanding qualified behavioral health care providers; however, these efforts have yet to address Fitness to Proceed. This measure compliments the Acts passed through the legislature related to mental health access to care including: Act 046, SLH 2014 which added APRNs to the list of providers who could provide a “certificate of disability” among other changes; Act 27, SLH 2015 which clarifies the role of advanced practice registered nurses in HRS sections relating to emergency hospital admission and involuntary hospitalization; and Act 088, SLH 2017, which, in part, allows APRNs to offer care and mental health services to patients in assisted community treatment programs similar to care and services offered by physicians and other health care service providers.

Advanced Practice Registered Nurses have more than doubled in Hawai‘i between 2005 and 2017, with continued growth since that period. At this time, nearly 1,300 licensed APRNs reside in Hawai‘i. APRNs are noted in national research to be more likely to provide care to underserved people and communities including rural areas, urban areas, to women, and to Medicaid recipients or uninsured people (Buerhaus et al., 2014). Currently, APRNs practice in all regions of Hawai‘i with more than 25% of Hawai‘i’s APRNs working in rural areas. The majority of APRNs practicing in the Counties of Hawai‘i, Maui, and Kaua‘i work in federally designated medically underserved areas. (Hawai‘i State Center for Nursing, 2017). Psychiatric Mental Health certified APRNs are in the top four APRN specialties for all Counties except for the City and County of Honolulu (Hawai‘i State Center for Nursing, 2019).

Hawai‘i’s laws for APRNs ensure public safety during patient care and authorized assessment, diagnosis, and prescriptive authority. APRNs have grown significantly in Hawai‘i with APRNs providing care in all regions in the state where people live. The intent of this measure is to continue to address and remove APRN barriers to providing care, particularly as it relates to access to care for severely mentally ill individuals and care in rural Hawai‘i and on neighbor islands.

The Hawai‘i State Center for Nursing urges you to pass this measure through your committee. Thank you for the dedication and care for healthcare workers and the people in Hawai‘i.

*The mission of the Hawai‘i State Center for Nursing is that through collaborative partnerships, the Center provides accurate nursing workforce data for planning, disseminates nursing knowledge to support excellence in practice and leadership development; promotes a diverse workforce and advocates for sound health policy to serve the changing health care needs of the people of Hawai‘i.*



# Hawai'i Psychological Association

*For a Healthy Hawai'i*

P.O. Box 833  
Honolulu, HI 96808

[www.hawaiiopsychology.org](http://www.hawaiiopsychology.org)

Phone: (808) 521-8995

COMMITTEE ON JUCIDIARY  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 2, 2021 - 9:35 am - videoconference

## **Opposition to SB619 SD1 RELATING TO ADVANCED PRACTICE REGISTERED NURSES**

The Hawai'i Psychological Association (HPA) is opposed to SB619 SD1, which allows Advanced Practice Registered Nurses (APRNs) with prescriptive authority and a psychiatric specialization to be included as a provider, in addition to psychologists and psychiatrists, who may perform court-ordered evaluations of a criminal defendant's fitness to proceed for felonies and misdemeanors.

Proponents of this bill are in error that the bill would improve access to health care, which HPA has always supported. **Fitness to proceed evaluations are assessments done for the criminal courts and do not constitute mental health care or treatment;** the client is the Court, not the criminal defendant. Furthermore, fitness to proceed is not a direct result of one's clinical status or diagnoses; it involves assessment of the functional capacities needed to proceed with one's court case. While APRNs are certainly qualified to administer diagnostic tests for treatment purposes, they can be licensed and certified without skills in the assessment of psycho-legal capacities. HPA supports the ability of APRNs to perform evaluations for involuntary commitment, disability and Assertive Community Treatment which are within their scope of practice. Fitness to proceed is not within their scope of practice.

**The second misunderstanding is the notion that there is somehow a shortage of qualified fitness to proceed examiners.** The Department of Health (DOH) currently has 24 private psychologists and psychiatrists who perform fitness evaluations on felony cases. In addition, the DOH currently has five full-time examiners on staff and is attempting to fill two vacant positions. There is a glut of examiners on Oahu who are available to do neighbor islands, if needed, especially through videoconferencing. There may be some confusion that APRNs are needed in order to make up for a shortage of psychiatrists; however, the law was changed such that psychiatrists are no longer mandatory in felony three panel evaluations, which can now be done by three psychologists.

In addition, there has been speculation that APRNs can fill a void created by a bill that passed last year which facilitates non-violent misdemeanor defendants being committed to Assisted Community Treatment in lieu of prosecution. **The delays with Assisted Community Treatment are due to the time it takes to process cases through Family Court which has nothing to do with fitness to proceed determinations.** The previous bill also called for fitness to proceed evaluations within two days provided that examiners are available; it has been thought that APRNs could fill this void. Screenings within two days could be accomplished by hiring from the more than adequate pool of available examiners. APRNs and laypersons may not fully appreciate that, in many if not most cases, an opinion on fitness within two days without adequate record reviews is both impractical and unethical.

Court orders for fitness to proceed also typically mandate opinions on a defendant's penal responsibility and dangerousness, which are more complex than evaluations of fitness to proceed. **Although this bill defines APRNs as needing an accredited national certification in psychiatric specialization, this credential does not include training in fitness to proceed, penal responsibility or dangerousness assessments.** To be clear, **forensic mental health is a sub-specialty area that requires advanced training beyond the graduate degree. Psychologists and psychiatrists also need this training in order to be qualified; the difference is that Psychology and Psychiatry have a training infrastructure with nationally established standards in forensic assessment - Nursing does not.**

It is a myth that APRNs are adequately trained to do forensic mental health assessments through existing Forensic Nursing internships which typically train APRNs to work with crime victims, not assess fitness to proceed, penal responsibility and dangerousness. In 2020 a forensic workforce analysis for the State of Washington, Neil Gowensmith, Ph.D. and Kris McLoughlin, MSN concluded that **"the nursing profession does not have specialized programs for forensic mental health expertise"**.

No one is questioning the value of APRNs in providing mental health services. That is not at issue here. HPA has submitted testimony to the legislature this year on HB302 and SB839, *supporting* the ability of APRNs to do disability determinations and counseling in death and dying, which are within their scope of practice. **If this bill is passed in its current form, APRNs would still not qualify to be added to the Department of Health's list of forensic examiners, due to lack of adequate training. Currently no state allows APRNs to perform fitness to proceed evaluations;** Hawaii would be the only state to do so. **Additional APRN training is therefore needed to do fitness to proceed exams,** which should include: at least a nationally accredited one-year internship in forensic mental health assessment; knowledge of forensic ethics, psychometrics and psycho-diagnostics; training in evaluation of fitness, dangerousness, penal responsibility; malingering and inter-rater reliability; as well as a familiarity with Hawaii Revised Statutes Chapter 704.

The stakes are very high. **Defense and prosecuting attorneys have not adequately weighed in so far.** These proceedings relate to public safety, and involve assessments on *dangerousness*. Correct placement in a jail versus hospital is essential for justice.

Thank you for the opportunity to provide input into this important bill.

Sincerely,



Alex Lichton, Ph.D.

Chair, HPA Legislative Action Committee

**Written Testimony Presented Before the  
Senate Committee on Judiciary**

**Hearing: March 2, 2021, 9:35 AM  
Via Videoconference**

By Hawai'i – American Nurses Association (Hawai'i-ANA)



**SB619, SD1- RELATING TO ADVANCED PRACTICE REGISTERED NURSES**

Chair Karl Rhoades, Vice Chair Jarrett Keohokalole, and members of the Senate Committee on Judiciary, thank you for this opportunity to provide testimony **in strong support for SB619, SD1**. This measure amends provisions concerning Fitness to Proceed examinations in criminal proceedings to specify circumstances in which qualified advanced practice registered nurses (APRNs) may participate.

This change is in keeping with previous Bills passed by the Legislature that have included APRNs in the lists of qualified, licensed healthcare practitioners who are authorized to provide such services throughout our community. Improving access to these services where previously there have been shortages resulting in delays and detrimental effects experienced by the vulnerable in our communities, has been the goal of these changes.

With regard to the APRNs scope of practice, Hawai'i has adopted the national best practices for APRN scope of practice, the APRN Consensus Model, which states that licensure, accreditation, and certification combined provide guidance on an APRN's scope of practice. As such, in accordance with their license, accreditation, certification and education, Chapter 89 – Nurses of the Hawai'i Administrative Rules (HAR) states that APRNs may order, interpret, or perform diagnostic, screening, and therapeutic examinations, tests, and procedures (HAR 16-89-81 Practice Specialties). In addition, APRNs must adhere to professional conduct as defined in HAR Chapter 89 – Nurses which prohibits nurses from performing nursing techniques or procedures without proper education and training (HAR 16-89-60 Types of Unprofessional Conduct) (6)(E). These provisions create a safe practice environment with clear standards to ensure high quality and safe care by requiring APRNs to complete all necessary education and training needed to ensure competence in performing skills, including those addressed in this measure. Engaging in education and training is consistent with the professional and regulatory expectation that nurses, and indeed all professional healthcare providers, engage in lifelong learning to ensure that they are providing safe, quality, evidence-based care in keeping with statutes and administrative rules applicable to each profession.

Hawai'i-ANA is the state constituent of the American Nurses Association, advocating for the improvement of health in our communities through public support for measures to address the needs of vulnerable populations. We join with our nurse colleagues throughout the State of Hawai'i in supporting this measure.

**Hawai'i-ANA respectfully requests that SB619, SD1 be passed through this committee.** Thank you for your continued support for measures that address the need for improving access to professional healthcare services throughout our community.

Contact information for Hawai'i – American Nurses Association

President: Katie Kemp, BAN, RN-BC  
Executive Director Dr. Linda Beechinor, APRN-Rx, FNP-BC  
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500 Lunalilo Home Road, #27-E, Honolulu Hawai'i USA 96825

[president@hawaii-ana.org](mailto:president@hawaii-ana.org)  
[executivedirector@hawaii-ana.org](mailto:executivedirector@hawaii-ana.org)

**SB-619-SD-1**

Submitted on: 2/27/2021 11:59:22 AM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Lee	Individual	Support	No

Comments:

I support this bill

**SB-619-SD-1**

Submitted on: 2/28/2021 12:02:23 AM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Pcola_Davis	Individual	Oppose	No

Comments:

Please do not increase an APRNs scope of practice and limit this action to physicians only



Groundswell Services, Inc.

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March 1, 2021

I am writing in opposition of SB619. I oppose on several grounds. Primarily, the **nursing field does not have the necessary training infrastructure to conduct fitness evaluations** in line with required court admissibility standards. Secondly, **expanding the pool of fitness evaluators will not increase access to treatment** in any way.

I am one of two federally-appointed Special Masters overseeing Colorado's fitness services system. As Special Master, I am actively working with Colorado's mental health administration to address delays and gaps in fitness evaluations. Tangible progress is being made in both the timeliness of services for fitness evaluation and restoration for the first time in years.

I am also a professor of forensic psychology at the University of Denver, with most of my research dedicated to issues regarding fitness to proceed. I am the former Chief of Forensic Services for the state of Hawaii, for which I oversaw standards and training for all fitness evaluators statewide. I have published numerous peer reviewed empirical articles on fitness evaluations, fitness restoration, fitness services and systems, and the qualifications and training standards of evaluators. I direct a fellowship in forensic psychology that conducts fitness to proceed evaluations. I consult with several states and jurisdictions about the qualifications of fitness evaluators. Finally, I have conducted hundreds of fitness to proceed evaluations myself, bringing many of them to colleagues for a blind peer review to ensure quality. In short, I am an expert in fitness evaluations and the qualifications required to conduct them. I cannot undersell the importance of ensuring that fitness evaluations are conducted within the court-required timeframes. It is critical that defendants are evaluated in a timely fashion. Hawaii, like many states, has been unable to conduct many fitness evaluations within court-required time frames.

Primarily, while timeliness is an important consideration, we cannot forget about quality. **Fitness evaluations must meet high standards of reliability, validity, and quality in order to be admissible to court.** Evaluations often include nuanced decisions requiring psychological assessment, medical analysis, legal knowledge, correctional mental health expertise, and other areas. Written reports are required; dedicated training is required to understand how disparate components are integrated into a cohesive, written report. These are not "run of the mill" skills that most disciplines gain through routine training. These are specialized, nuanced areas of expertise that require dedicated and focused training. At present, the field of nursing (like most fields working with individuals with mental illness) does not have the requisite training that addresses these issues.

Additionally, fitness evaluations are often bundled with evaluations of legal sanity and dangerousness – areas that are even further beyond the scope of current nursing training and practice.

This is not a knock against the field of nursing by any stretch. Indeed, the same arguments were legitimately levied against psychology several decades ago, when psychiatry was the exclusive domain of fitness evaluation. In response, psychology responded with a targeted developmental plan for creating a forensic specialization – psychology created a forensic division, forensic psychology journals, forensic psychology training programs, forensic specialization, research into forensic evaluation, and so on. As a result of these efforts – decades in the making – the quality of reports between psychiatrists and psychologists are now equal. I am not asserting that nurses could not ever adequately conduct fitness evaluations, only that the nursing field does not have the adequate infrastructure to adequately conduct them now. Even APRNs, as specialized and skilled as they are, have not undergone special courses and training programs dedicated to conducting fitness evaluations. The training infrastructure simply is not there. As a footnote, I should also mention that **fitness evaluations are not something that can be learned in a workshop or a series of training seminars. They require focused, dedicated study.**

Additionally, such a change would require an enormous legislative and policy-heavy bulk that would come with adding new disciplines. Adding nursing would require intensive training, changes to policy, changes to statute, an appeals process, a qualification process, an administrative rules overhaul – not to mention the inevitable challenges in court as to the reliability, validity, and quality of those evaluations and evaluators. **All of this bloated infrastructure and its inevitable delays would only make the problem of delays worse.** Indeed, after completing a national review of state statutory qualifications for fitness evaluators just a few years ago, **I found NO states that explicitly authorized APRNs to conduct fitness evaluations.**

In summary, I oppose SB619. Timeliness of evaluations is critical, but not at the expense of quality. This bill runs the risk of providing the court with inadmissible (or easily contested) fitness evaluation reports, which will only serve to cause more delays and inappropriate admissions to the state hospital. Nurses do not currently have adequate training to conduct fitness evaluations, evaluations will not – in any way – increase accessibility to treatment, and Hawaii does not need to be a rogue state in resorting to such drastic measures to complete fitness evaluations. Hawaii’s DOH and statutory authority for fitness evaluators have been models for other states to emulate; passage of SB619 would mire Hawaii in scientifically unsound practice and even more extensive needless delays.



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Neil Gowensmith, PhD  
President, Groundswell Services, Inc.



**SB-619-SD-1**

Submitted on: 2/28/2021 9:32:57 AM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brendon Friedman	Individual	Support	No

Comments:

**I strongly support this measure -thank you!**

**Brendon Friedman, DNP, APRN-Rx, FNP-BC, PMHNP-BC, CME**

**Family & Psychiatric-Mental Health Nurse Practitioner, Assistant Professor,  
Private Practice Owner**

2838 E. Manoa Rd

Honolulu, HI 96838-1964

**SB-619-SD-1**

Submitted on: 2/28/2021 6:51:49 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alexandra Williams	Individual	Support	No

Comments:

Aloha Honored Legislators,

I support the overall purpose of SB 619 as it expands the law to specify that nurse practitioners may practice to the full extent of their education, training, and scope of practice. I am disappointed, however, to see that SB619 SD1 was amended to include the language "Takes Effect 7/1/2050". That is 29 years from now. It is short-sighted to think about limiting advanced practice registered nurses in this way, and I urge you to pass this bill with the original language that states "This Act shall take effect upon its approval."

I live in a rural community, and we depend upon nurse practitioners as an integral part of closing the disparity gaps we experience in healthcare. In fact, our Sexual Assault Nurse Examiner (SANE) program on Hawaii Island has relied on APRN's for years to be able to continue, because physicians have not chosen to participate. For those most vulnerable populations living at the margins, advanced practice registered nurses are crucial to expanding care and innovating practice. Allowing them to take part in Fitness to Proceed determinations makes good legal sense - since they are already acting as primary care providers with prescriptive authority and are more than capable of assessing a patient's capacity to understand. In fact, because of their superior patient care skills, advanced practice registered nurses may be among the best care providers to make such determinations.

Please pass SB619, but remove the amendment to "take effect 7/1/2050" and return to the language "This Act shall take effect upon its approval."

Respectfully,

Alexandra Williams

TO: COMMITTEE ON JUCIDIARY  
Senator Karl Rhoades, Chair  
Senator Jarrett Keohokalole, Vice Chair  
Tuesday, March 2, 2021 - 9:35 am – videoconference

FROM: Marvin W. Acklin, PhD, ABPP  
Licensed Psychologist PSY-#394

Re: Opposition to SB619  
RELATING TO ADVANCED PRACTICE REGISTERED NURSES

Date: 02/28/2021

I am a licensed and board-certified forensic psychologist in the State of Hawaii. I have conducted over 800 court appointed forensic mental health evaluations in Hawaii circuit court 25 years and over 50 in Federal District Court over 25 years. I have published 6 peer-reviewed articles specifically on Hawaii's unique three panel system, presented at conferences on the conduct of these evaluations in Hawaii and mainland national meetings, and testified in court dozens of times.

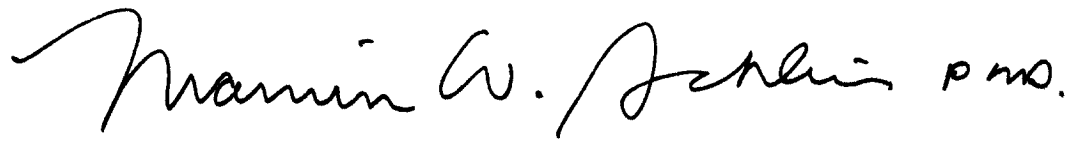
Whatever the shortcomings of the current three panel system, replacement of doctoral level forensic psychologists, who have extensive qualifications to conduct evaluations and serve as expert witness to the court, with sub-doctoral providers who have no training in behavioral science or forensic specialization is a bad idea. Forensic mental health evaluations are not a health service activity. The conduct of forensic mental health evaluations is not within the scope of practice of psychiatric nurse practitioners. The nursing profession does not have forensic specialization training programs in the State of Hawaii.

It is not at all clear as to what sort of problem--for which this is the proposed solution--is being addressed. The statutory appointment of unqualified non-forensically trained providers would have the unintended effect of lowering the quality of the evaluations (which has been extensively studied in the national peer-revised forensic literature). There is no shortage of available providers. Problems in the timely completion of these evaluations has been demonstrated to be due inefficiencies in the Judiciary and Department Public Safety. Ironically the covid pandemic forced both the Judiciary and DPS to improve their administration and dissemination of legal and medical information to providers. Nurse practitioners may play a role in the public forensic mental health system, but they do not possess the technical and professional skills and qualifications s to serve as forensic examiners.

Based on these considerations I oppose this legislation.

Committee on Judiciary  
Opposition to SB 691  
February 28, 2021  
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Thank you for your attention and consideration,

A handwritten signature in black ink that reads "Marvin W. Acklin Ph.D." The signature is written in a cursive style with a large, sweeping initial 'M'.

Marvin W. Acklin, Ph.D., ABPP  
Board-certified Clinical & Forensic Psychologist  
Licensed Hawaii -- 394

**SB-619-SD-1**

Submitted on: 2/28/2021 10:53:02 PM

Testimony for JDC on 3/2/2021 9:35:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Allison	Individual	Oppose	No

Comments:

I adamantly oppose this bill as I believe there will be issues with APRNs being considered expert witnesses when testifying alongside psychiatrists and psychologists. This has the potential to cause issues with due process.

A forensic examiner should be considered an expert witness by the court but APRN's receive drastically less training than psychiatrists and psychologists. Psychiatric residency training includes forensic education and rotations so that every graduating psychiatrist, regardless of what program they attend, has been exposed to and educated on forensic cases.

This level of training and expertise is not found in psychiatric mental health nurse practitioner programs. Therefore a psychiatric nurse practitioner may never have even seen a forensic patient nor have they had any education on the ethics, complications, and diagnoses likely to be found in the forensic population. APRN programs are not nationally standardized, unlike psychiatric training, thus there is no consistent oversight on the quality of training or education. You can become a psychiatric nurse practitioner with only 500 clinical hours or about three months of clinical exposure.

The most important issue, however, is that forensic examinations include a determination of dangerousness. A forensic exam must be completed before a patient who has been found not guilty by reason of insanity is released to the community. This includes evaluating patients that may have committed extreme acts of violence, including rape, arson, and even murder. Lowering the standard for performing these evaluations places our entire community at risk. It also places the patients being evaluated at risk as there is a delicate balance between their civil liberties and the safety of society. Psychiatrists are held to a different standard in the courtroom compared to APRNs. I imagine these differences in standards could cause issues with due process. In felony cases, if an APRN is assigned to do an assessment but the other examiners are psychologists and psychiatrists, what if the judge decides the APRN is not an expert witness? Then the defendant has to wait several more months while a new examiner is assigned, extending their time in custody through no fault of their own.

Of note, previous testimony submitted by those in support of the bill said that allowing APRNs to do these examinations would help expand access to treatment by increasing

those that can refer patients to Assisted Community Treatment (ACT). However, review of the HRS section 334-123 already allows APRNs to refer patients for ACT because a petition can be filed with family court without a forensic examination. In fact, this kind of referral would not be a forensic examiner's role because it specifically addresses treatment and a forensic examiner does not provide treatment. This lack of detailed understanding on the legal issues and the boundaries needed for a forensic examiner by those in support of this bill is very concerning.

This complicated intersection of law and psychiatry, of safety and society, demands a thorough and thoughtful evaluation guided by experience, education, and training. That level of training and experience is simply not provided by APRN training programs and thus these evaluations remain outside their scope of practice.

Marva Lawson, M.D.  
 3504 Kumu St.  
 Honolulu, Hawaii 96822

March 1, 2021

Re: SB619: RELATING TO ADVANCED PRACTICE REGISTERED NURSES  
 Fitness to Proceed, Examinations

Hearing – Tuesday, March 2, 2021; 0935

Distinguished Senators:

Thank you for the opportunity to submit testimony as an individual constituent. I OPPOSE SB619.

As written, the purpose of this Bill is to *"improve patient access to medical care and services by clarifying the circumstances under which advanced practice registered nurses may practice to the fullest extent of their training and education to authorize advanced practice registered nurses to participate in the fitness to proceed process."*

Unfortunately, in this instance, advanced practice registered nurse/nurse practitioners seek to practice to the full extent of an MD/DO degree's education and training, despite a significant discrepancy as outlined in the table below.

	Psychiatric (M.D./D.O.)	APRN-Rx	DNP
Prerequisite education	4-year BA/BS degree	4-year BSN ~800 clinical hours	BSN MSN
Graduate education (clinical hours)	4-year M.D./D.O  ~6,000 clinical hours MEDICAL SCHOOL:  Clinical Rotations: (Face to Face) Internal Medicine Family Medicine Pediatrics OBGyn Neuroscience/Neurology Radiology Surgery Emergency Medicine	3-years  ~500 clinical hours +  30hrs pharmacology for Rx privileges  NO forensic education or training	BSN 71-73 <i>credit hrs</i> MSN 38-40 <i>credit hrs</i>  Primarily Online clinical hours  Practice Inquiry Project and presentation  NO forensic education or training
Residency (clinical hours)	4 years ~10,000 (includes forensic education & training)	None	None
Accreditation	*ACGME	Multiple agencies	Multiple agencies
Total clinical hours	~16,000	~1,300	~1,000
Forensic Psychiatry Fellowship (subspecialty – the intersection of psychiatry and the legal system)	1 year	None Certification Programs <a href="http://www.forensicnurses.org">www.forensicnurses.org</a>	None
Total education years	12-13years	7	Varies by program
Certification exam	American Board of Psychiatry & Neurology	7+ organizations offer a certification exam	Optional

\*American College of Graduate Medical Education

While APRNs can "specialize" in Psychiatric Mental Health (PMHNP), as demonstrated in the table above, their education and training are not equivalent to physician specialization. Areas of APRN specialization are considered subspecialties for physicians. Unlike their APRN colleagues, who may complete a forensic nursing certification program, physicians must complete additional fellowship training beyond their formal medical residency training to achieve proficiency in a subspecialty. For example, Forensic Psychiatry Fellowship requirements include education and training in aspects of psychiatry as it intersects with the legal system. More importantly, didactics in ethics and civil rights and clinical competencies in evaluating dangerousness, violence, risk

assessment, competency to stand trial and sanity, are requirements for graduation/completion of a Forensic Psychiatry Fellowship. According to Hawaii Rule 702, "an expert witness must possess the requisite knowledge, skill, experience, training or education to offer an opinion on a subject requiring scientific, technical or other specialized knowledge." Thus, APRNs do not qualify as expert witnesses.

Finally, SB619 seeks to not only authorize APRNs to complete panel examinations for fitness to proceed but also evaluate dangerousness for a person(s) found not guilty by reason of insanity for serious and violent crimes including rape, arson, and even attempted murder, before discharge to the community on Conditional Release. This bill would expand the scope of practice for advanced practice registered nurses beyond their "education and training" and place the community at significant risk.

Sincerely,

*Marva Lawson, M.D.*