



# Hawai'i Psychological Association

*For a Healthy Hawai'i*

P.O. Box 833  
Honolulu, HI 96808

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Phone: (808) 521 -8995

COMMITTEE ON HEALTH  
Senator Jarret Keohokalole, Chair  
Senator Rosalyn H. Baker, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Tuesday, February 16, 2021 - 9:00 am - Conference Room 229 - videoconference

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

The Hawai'i Psychological Association (HPA) is opposed to HB303, 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.

Foundationally, HPA would like to establish that the determination of whether a defendant is fit to proceed is not a medical issue – it is a legal-psychological issue.

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.

Presumably APRNs want to have the same authority and scope of practice that psychiatrists have in these proceedings; however, it is important to note it is no longer mandatory to have a psychiatrist as an examiner. Similarly, having a doctoral degree does not make one qualified to do this work – it is a specialty area that requires advanced training beyond the degree.

Moreover, there is no shortage of fitness examiners. In fact, there is a glut on Oahu and the Oahu examiners can do video evaluations on outer islands. The shortage of examiners at the Department of Health could be solved by simply hiring more examiners - a qualified pool of psychologists already exists.

While the State has been trying to implement certification requirements to increase quality; this bill is a step backward that could decrease quality. Psychologists typically have 720 hours of practicum training, 2,000 hours of internship and 2,000 of post-doctoral internship. APRNs, in contrast, have about 500 hours of practicum training.

HPA has previously submitted testimony on HB302 and SB839, *supporting* the ability of APRNs to do disability determinations and counseling in death and dying, which is within their scope of practice. The subject matter of the statutes amended by this bill is outside their current scope of practice and training.

Additional APRN training is therefore needed to do this work, which should include: at least a nationally accredited one-year internship in forensic mental health; knowledge of forensic ethics, psychometrics and psychodiagnostics; training in evaluation of fitness, dangerousness, penal responsibility, malingering and inter-rater reliability; as well as a familiarity with Hawaii Revised Statutes Chapter 704.

Unlike the fields of psychology and psychiatry, APRNs do not typically develop subspecialties, like forensic mental health. The infrastructure for such specialization does not exist. Psychology has nationally established standards in forensics whereas nursing does not.

It's also important to note that nursing ethics are not necessarily compatible with legal proceedings where the client is the court - not the patient. Nurses typically work within a treatment team; forensic examiners practice independently.

The stakes are high. These proceedings relate to public safety, and involve assessments on *dangerousness*. Correct placement in a jail versus hospital is essential for justice.

Finally, if this bill is passed in its current form, APRNs would still not qualify as forensic examiners, due to lack of adequate training.

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

Sincerely,

A handwritten signature in cursive script that reads "Alex Lichton, Ph.D.".

Alex Lichton, Ph.D.

Chair, HPA Legislative Action Committee



**Written Testimony Presented Before the  
COMMITTEE ON HEALTH  
and  
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**DATE: Tuesday, February 16, 2021**

**TIME: 9:00 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 with Amendments for SB619**

Chairs Keohokalole and Baker, Vice Chairs Baker and Chang, and members of the Senate Committees on Health and Commerce and Consumer Protection, thank you for the opportunity for the Hawai'i State Center for Nursing to provide testimony in strong support of this measure with amendments. 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. **The amendments requested are to update Section 3 as it relates to HRS 704-404 and requests general technical amendments to reflect the improvements achieved in Act 26, SLH 2020.**

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 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 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.*

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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 additions of APRNs to the Assisted Community Treatment program (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 established 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 **with amendments** through your committee. Thank you for the dedication and care for healthcare workers and the people in Hawai'i.

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**§704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding fitness to proceed.**

(1) Whenever there is reason to doubt the defendant's fitness to proceed, the court may immediately suspend all further proceedings in the prosecution; provided that for any defendant not subject to an order of commitment to the director of health for the purpose of the examination, neither the right to bail nor proceedings pursuant to chapter 804 shall be suspended. If a trial jury has been empaneled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution:

(a) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if a court-based certified examiner is available, the court shall appoint the court-based certified examiner to examine and provide an expedited report solely upon the issue of the defendant's capacity to understand the proceedings against the defendant and defendant's ability to assist in the defendant's own defense. The court-based certified examiner shall file the examiner's report with the court within two days of the appointment of the examiner, or as soon thereafter is practicable. A hearing shall be held to determine if the defendant is fit to proceed within two days of the filing of the report, or as soon thereafter as is practicable;

(b) In all other nonfelony cases, and where a court-based certified examiner is not available in cases under paragraph (a), the court shall appoint one qualified examiner to examine and report upon the defendant's fitness to proceed. The court may appoint as the examiner either a psychiatrist, ~~or~~ a licensed psychologist, or advanced practice registered nurse, designated

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by the director of health from within the department of health; and

(c) In felony cases, the court shall appoint three qualified examiners to examine and report upon the defendant's fitness to proceed. The court shall appoint as examiners psychiatrists, licensed psychologists, advanced practice registered nurse, ~~[or]~~ qualified physician~~[-],~~ or qualified advanced practice registered nurse; provided that one of the three examiners shall be a psychiatrist, ~~[or]~~ licensed psychologist, or advanced practice registered nurse designated by the director of health from within the department of health.

All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted while the defendant is in custody or on release or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or a longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians, qualified advanced practice registered nurses, or psychologists retained by the defendant be permitted to witness the examination. ~~[As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.]~~

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## THE QUEEN'S HEALTH SYSTEMS

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To: The Honorable Jarrett Keohokalole, Chair  
The Honorable Rosalyn Baker, Vice Chair  
Members, Senate Committee on Health

The Honorable Rosalyn H. Baker, Chair  
The Honorable Stanley Chang, Vice Chair  
Members, Senate Committee on Commerce & Consumer Protection

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

Date: February 16, 2021

Re: Support for SB619: 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.

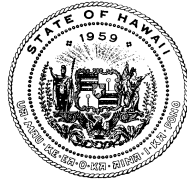
Queen's appreciates the opportunity to provide testimony in support of SB619, relating to advanced practice registered nurses. This bill would amend existing provisions concerning fitness to proceed examinations in criminal proceedings to include qualified advanced practice registered nurses or advanced 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.

*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.*





STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**LATE**

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

SENATOR JARRETT KEOHOKALOLE, CHAIR  
SENATE COMMITTEE ON HEALTH

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: 2/16/2021

Hearing Time: 9:00 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 Advance Practice Registered Nurses (APRNs) are an integral  
10 part of the continuum of care for behavioral health and are an important part of the BHA’s  
11 Adult Mental Health Division’s (AMHD) multi-disciplinary team approach with respect to the  
12 care and treatment of individuals diagnosed with a serious mental illness (SMI). We want to  
13 increase their role in areas where they may provide direct clinical care services including, for  
14 example, as rotating staff providing coverage as the hospital Medical Officer of the Day.



1           The AMHD is tasked with maintaining a qualified group of professionals in both the  
2 public and private sectors whose responsibility is to provide expert opinions to the courts with  
3 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’s acknowledges that while forensic evaluation may lead to clinical  
7 recommendations and treatment, the evaluation itself is not considered treatment or medical  
8 care. For example, the work of forensic examination under Chapter 704, HRS is, by its nature,  
9 intended to provide an independent expert opinion to the court and is not considered “care” or  
10 “treatment.”

11           We appreciate and thank the legislature for its commitment to improving the  
12 coordination of behavioral health services statewide. In September 2020, Act 026 Session Laws  
13 2020 (H.B. 1620 HD2 SD2) removed the requirement to include psychiatrists as a member of  
14 the three-panel examination process. The direct impact of this law eliminated issues with  
15 available panel examiners and there are no existing capacity issues for the completion of  
16 forensic evaluations. As such, this measure is not necessary as it does not address an existing  
17 need for changes to the Chapter 704 panel process.

18           As previously stated, we agree that APRNs have a role as members of multi-  
19 interdisciplinary teams and should be allowed to work within their scope of practice. We  
20 respectfully request that this measure be deferred to allow the legislature’s work from last  
21 session, through Act 026, to continue to be assessed and monitored.

22           **Offered Amendments:** None.

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

24           **Fiscal Implications:** Undetermined.



**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, RELATING TO ADVANCED PRACTICE REGISTERED NURSES.

**BEFORE THE:**

SENATE COMMITTEES ON HEALTH AND ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, February 16, 2021 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Conference Room 229, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Kory W. Young,  
Deputy Attorney General, at 586-1160)

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Chairs Keohokalole and Baker and Members of the Committees:

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.

It should also be noted, the bill's proposed amendments to sections 704-404, 704-407.5, 704-411, and 704-414, HRS, in sections 3, 5, 8, and 10, of the bill, respectively, are made to wording that was superseded by Act 26.

As one example, the wording of section 704-404(2) in section 3 of the bill at page 3, line 4, through page 4, line 14, is substantially different from the statute's current wording.

The Department respectfully requests that this measure be deferred.

**Testimony of the Board of Nursing**

**Before the  
Senate Committee on Health  
and  
Senate Committee on Commerce and Consumer Protection  
Tuesday, February 16, 2021  
9:00 a.m.  
Via Videoconference**

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

**WRITTEN TESTIMONY ONLY**

Chair Keohokalole, Chair Baker, and Members of the Committees:

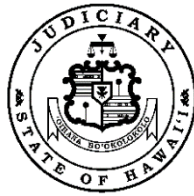
My name is Lee Ann Teshima, and I am the Executive Officer of the Board of Nursing (Board). The Board appreciates the intent of and offers comments on this bill.

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

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 Judiciary, State of Hawai'i*

**Testimony to the Thirty-First State Legislature, 2021 Regular Session**

**Senate Committee on Commerce and Consumer Protection**

Senator Jarrett Keohokalole, Chair  
Senator Rosalyn H. Baker, Vice-Chair

Tuesday, February 16, 2021, 9:00AM  
VIA VIDEOCONFERENCE

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 619, Relating to Advanced Practice Registered Nurses.

**Purpose:** Amends 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.

**Judiciary's Position:**

The Judiciary defers to the Department of Health as to the efficacy of including advanced practice registered nurses as evaluators for the various evaluations required under Chapter 704. However, the Judiciary would like to note that the current legislation amends language contained in the 2016 versions of the sections 704-404, 406, 407.5, 411, 414, and not as they were amended in September of 2020.

Thank you for the opportunity to testify on this measure.

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

**Hearing: February 16, 2021, 9:00 AM  
Via Videoconference**

By Hawai‘i – American Nurses Association (Hawaii-ANA)



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

Chair Jarrett Keohokalole, Vice Chair Rosalyn H. Baker, and members of the Senate Committee on Health, thank you for this opportunity to provide testimony **in strong support for SB619**. This measure, SB619 proposes amendments to provisions concerning fitness to proceed examinations in criminal proceedings to include qualified advanced practice registered nurses (APRN) or advanced practice registered nurses who hold an accredited national certification in an advanced practice registered nurse psychiatric specialization as the Department of Health may determine a list of certified examiners from which an examiner for this purpose may be appointed. SB619 would broaden the list of certified examiners which may be appointed for this purpose, improving access to this required service and facilitating court proceedings in cases where a determination of a defendant’s mental fitness is required by the court.

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.

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 be passed through this committee.** Thank you for your continued support for measures that address the need for improving access to professional healthcare services in 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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Honolulu Hawai‘i USA 96825

## Hawai'i Association of Professional Nurses (HAPN)



To: The Honorable Senator Jarrett Keohokalole, Chair of the Senate Committee on Health; and Senator Baker, Chair of the Senate Committee on Commerce and Consumer Protection

From: Hawaii Association of Professional Nurses (HAPN)  
Subject: SB619 – Relating to Advanced Practice Registered Nurses

Hearing: February 16, 2021, 9a.m.

Aloha Senator Keohokalole, Chair; Senator Baker, Vice Chair; and Committee Members of the Senate Committee on Health; and Senator Baker, Chair; Senator Chang, Vice Chair; and Committee Members of the Senate Committee on Commerce and Consumer Protection,

Thank you for the opportunity to submit testimony regarding SB619. HAPN is in **Support** to include Advanced Practice Registered Nurses (APRN) with the ability to examine defendants with respect to physical or mental disease, disorder, or fitness to proceed under criminal proceedings. 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. **The amendments requested are to update Section 3 as it relates to HRS 704-404 to reflect the improvements achieved in Act 26, SLH 2020. This requested amendment is enclosed at the end of this testimony.**

HAPN recognizes the need to be part of the solution when it comes to the mental health needs and evaluation of individuals a part of the judicial process. Many of our members have been able to be part of the general expansion of mental health support through certification as a Psychiatric Mental Health Advanced Practice Registered Nurse. 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.

HAPN’s mission, to be the voice of APRNs in Hawaii, has been the guiding force that propelled us to spearhead the advancement of patients access to healthcare as well as supporting the recognition of the scope of practice for APRNs in Hawaii which led us to full practice authority. We have worked to improve the physical and mental health of our communities.

Thank you for the opportunity to share the perspective of HAPN with your committee. Thank you for your enduring support of the nursing profession in the Aloha State.

Respectfully,  
Dr. Jeremy Creekmore, APRN



HAPN President

Dr. Bradley Kuo, APRN  
HAPN Legislative Committee, Chair  
HAPN Past President

Requested amendments, Page 3, Line 4 – Page 4, Line 15

**§704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding fitness to proceed.**

(1) Whenever there is reason to doubt the defendant's fitness to proceed, the court may immediately suspend all further proceedings in the prosecution; provided that for any defendant not subject to an order of commitment to the director of health for the purpose of the examination, neither the right to bail nor proceedings pursuant to chapter 804 shall be suspended. If a trial jury has been empaneled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution:

(a) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if a court-based certified examiner is available, the court shall appoint the court-based certified examiner to examine and provide an expedited report solely upon the issue of the defendant's capacity to understand the proceedings against the defendant and defendant's ability to assist in the defendant's own defense. The court-based certified examiner shall file the examiner's report with the court within two days of the appointment of the examiner, or as soon thereafter is practicable. A hearing shall be held to determine if the defendant is fit to proceed within two days of the filing of the report, or as soon thereafter as is practicable;

(b) In all other nonfelony cases, and where a court-based certified examiner is not available in cases under paragraph (a), the court shall appoint one qualified examiner to examine and report upon the defendant's fitness to proceed. The court may appoint as the examiner either a psychiatrist, ~~or~~ a licensed

psychologist, or advanced practice registered nurse,  
designated by the director of health from within the  
department of health; and

(c) In felony cases, the court shall appoint three  
qualified examiners to examine and report upon the  
defendant's fitness to proceed. The court shall appoint  
as examiners psychiatrists, licensed psychologists,  
advanced practice registered nurse, ~~[or]~~ qualified physician[-],  
or qualified advanced practice registered nurse; provided that  
one of the three examiners shall be a psychiatrist, ~~[or]~~  
licensed psychologist, or advanced practice registered nurse  
designated by the director of health from within the  
department of health.

All examiners shall be appointed from a list of certified  
examiners as determined by the department of health. The  
court, in appropriate circumstances, may appoint an  
additional examiner or examiners. The examination may be  
conducted while the defendant is in custody or on release  
or, in the court's discretion, when necessary the court  
may order the defendant to be committed to a hospital or  
other suitable facility for the purpose of the  
examination for a period not exceeding thirty days, or a  
longer period as the court determines to be necessary for  
the purpose. The court may direct that one or more  
qualified physicians, qualified advanced practice registered  
nurses, or psychologists retained by the defendant be  
permitted to witness the examination. ~~[As used in this  
section, the term "licensed psychologist" includes  
psychologists exempted from licensure by section 465-  
3(a)(3) and "qualified physician" means a physician  
qualified by the court for the specific evaluation  
ordered.]~~

**SB-619**

Submitted on: 2/12/2021 2:13:21 PM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Buchner	Individual	Support	No

Comments:

Please support qualified APRNs to conduct fitness to proceed examinations.

**SB-619**

Submitted on: 2/12/2021 3:07:32 PM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Yvonne Geesey	Individual	Support	No

Comments:

support, mahalo!

**SB-619**

Submitted on: 2/12/2021 3:51:32 PM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Tessier	Individual	Support	No

Comments:

I support this bill to allow APRNs to perform a function for which they have been prepared by education, training, and licensure.

**SB-619**

Submitted on: 2/12/2021 10:11:20 PM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tracy Thornett	Individual	Support	No

Comments:

I support this bill. It will increase access to psychiatric evaluation by qualified providers and help to expedite the 704 process for all parties involved.

**SB-619**

Submitted on: 2/15/2021 8:57:25 AM

Testimony for HTH on 2/16/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion Poirier	Individual	Support	No

Comments:

Testimony Submittal of February 15, 2021

To: Senate Committes on Health/Consumer Protection and Commerce

For: February 16, 2021 Hearing at 9:00am at State Capitol

From: Marion Poirier, M.A., R.N., Healthcare Consultant

CHAIRS Keohokalole and Baker and Members:

My name is Marion Poirier, and I am a registered nurse member of the Board of Hawaii-American Nurses Assn. My testimony is in SUPPORT of this measure.

As a former executive director of NAMI HAWAII and other non-profits, I have various experiences that lead me to conclude that nursing's footprint is important for fitness to proceed examinations.

These examinations should be time sensitive and comprehensive. The qualified nurses cited already add this dimension to serious clinical matters, and this is another aspect of their service to the community.

Thank you for the opportunity to support this measure.



**LATE**

**SB-619**

Submitted on: 2/15/2021 2:23:59 PM  
Testimony for HTH on 2/16/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Individual	Support	No

Comments:

Aloha Chair, Vice Chair and members of the committee, I am Wailua Brandman APRN FAANP. I have a solo private practice providing primary mental health care to the mental health population. I am submitting individual testimony. I have been a thought leader in psychiatric nursing in Hawaii for the past 25 years. I am Treasurer and founding President of the Hawaii Association of Professional Nurses. I am also a member of the State Center for Nursing’s APRN Practice and Policy Committee. The laws included in this measure are 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 additions of APRNs to the Assisted Community Treatment program(Act 88, SPH 2017), it is clear 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. Hawaii 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. 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. I urge you to pass this measure with amendments through your committee. Thank you for the dedication and care for healthcare workers and the people in Hawai’i.

Wailua Brandman APRN FAANP, Ke`ena Mauiola Nele Paia, 615 Piikoi Street, STE 1406, Honolulu, HI 96814 (808)255-4442.

**LATE**

**SB-619**

Submitted on: 2/15/2021 9:40:19 PM  
Testimony for HTH on 2/16/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Allison	Individual	Oppose	No

Comments:

I adamantly oppose this bill as this is far outside the scope of practice for an APRN. 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. To be considered a forensic psychiatrist, however, requires an extra year of forensic fellowship beyond the standard four year psychiatric residency. So even though every psychiatrist has had some forensic exposure, even they would not routinely consider themselves forensic psychiatrists and would not routinely perform these kinds of complicated evaluations, despite graduating with a bare minimum of 8,000 hours of psychiatric training and many thousands of hours of general medical training in addition to this.

This level of training and expertise is not found in psychiatric mental health nurse practitioner programs. Therefor 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. This is a drastic difference in clinical experience and education. Additionally, forensic psychiatry involves the intersection of law and psychiatry. As such, those submitting forensic examinations should be considered experts in their field. A psychiatric nurse practitioner cannot be considered an expert in psychiatry given these large discrepancies in minimum training and experience.

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. 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.

**LATE**

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

February 15, 2021

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

Hearing – Tuesday, February 16, 2021; 0900

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.

DNP	Psychiatric (M.D./D.O.)		APRN-Rx	
	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)	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>  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	None	
Total education years	12-13years	7	Varies by program	
Certification exam	American Board of Psychiatry & Neurology	7+ organizations offer certification exam	Optional	

\*American College of Graduate Medical Education

While APRNs can "specialize" in Psychiatric Mental Health (PMHNP), this cannot compare to physician specialization. Areas of APRN specialization are considered subspecialties for physicians. Unlike their APRN colleagues, 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, based on their education and training, 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.*