

JAN 22 2021

A BILL FOR AN ACT

RELATING TO ADVANCED PRACTICE REGISTERED NURSES.

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

1 SECTION 1. The legislature finds that advanced practice
2 registered nurses provide a wide variety of health care services
3 to people across the State. The legislature further finds that
4 existing law requires each hospital within the State to allow
5 advanced practice registered nurses to practice at the hospital
6 within the full scope of their authorized practice, including
7 practice as primary care providers. Advanced practice
8 registered nurses are also recognized as participating primary
9 care providers for insurance purposes under the State's
10 insurance code. Despite these facts, certain sections of
11 existing law fail to include advanced practice registered nurses
12 from definitions or designations of health care entities,
13 including the lists of those who may examine defendants with
14 respect to physical or mental disease, disorder, or fitness to
15 proceed under criminal proceedings, which presently only
16 includes psychiatrists, licensed psychologists, and qualified
17 physicians. Accordingly, the purpose of this Act is to improve



1 patient access to medical care and services by clarifying the
2 circumstances under which advanced practice registered nurses
3 may practice to the fullest extent of their training and
4 education to authorize advanced practice registered nurses to
5 participate in the fitness to proceed process.

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

9 "§704- Definitions of terms in this chapter. In this
10 chapter, unless a different meaning is plainly required:

11 "Advanced practice registered nurse" means an advanced
12 practice registered nurse with prescriptive authority licensed
13 pursuant to section 457-8.6 and who holds an accredited national
14 certification in an advanced practice registered nurse
15 psychiatric specialization.

16 "Licensed psychologist" means an individual authorized to
17 practice psychology under chapter 465 and includes psychologists
18 exempted from licensure by section 465-3(a)(3).

19 "Qualified advanced practice registered nurse" means a
20 person licensed pursuant to chapter 457 and qualified by the
21 court for the specific evaluation ordered.



1 "Qualified physician" means a person licensed to practice
2 medicine under chapter 453 who is qualified by the court for the
3 specific evaluation ordered."

4 SECTION 3. Section 704-404, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) Upon suspension of further proceedings in the
7 prosecution, the court shall appoint three qualified examiners
8 in felony cases, and one qualified examiner in nonfelony cases,
9 to examine and report upon the defendant's fitness to proceed.
10 In felony cases, the court shall appoint as examiners at least
11 one psychiatrist or advanced practice registered nurse and at
12 least one licensed psychologist. The third examiner may be a
13 psychiatrist, licensed psychologist, advanced practice
14 registered nurse, or qualified physician. One of the three
15 examiners shall be a psychiatrist or licensed psychologist
16 designated by the director of health from within the department
17 of health. In nonfelony cases, the court may appoint as
18 examiners either a psychiatrist, advanced practice registered
19 nurse, or a licensed psychologist. All examiners shall be
20 appointed from a list of certified examiners as determined by
21 the department of health. The court, in appropriate



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

15 SECTION 4. Section 704-406, Hawaii Revised Statutes, is
 16 amended by amending subsection (3) to read as follows:

17 "(3) When the court, on its own motion or upon the
 18 application of the director of health, the prosecuting attorney,
 19 or the defendant, has reason to believe that the defendant has
 20 regained fitness to proceed, for a defendant charged with the
 21 offense of murder in the first or second degree, attempted

1 murder in the first or second degree, or a class A felony, the
2 court shall appoint three qualified examiners and may appoint in
3 all other cases one qualified examiner, to examine and report
4 upon the physical and mental condition of the defendant. In
5 cases in which the defendant has been charged with murder in the
6 first or second degree, attempted murder in the first or second
7 degree, or a class A felony, the court shall appoint as
8 examiners at least one psychiatrist and at least one licensed
9 psychologist. The third examiner may be a psychiatrist,
10 licensed psychologist, advanced practice registered nurse, [ø]
11 qualified physician[-], or qualified advanced practice
12 registered nurse. One of the three examiners shall be a
13 psychiatrist or licensed psychologist designated by the director
14 of health from within the department of health. In all other
15 cases, the one qualified examiner shall be a psychiatrist or
16 licensed psychologist designated by the director of health from
17 within the department of health. The court, in appropriate
18 circumstances, may appoint an additional examiner or examiners.
19 All examiners shall be appointed from a list of certified
20 examiners as determined by the department of health. After a
21 hearing, if a hearing is requested, if the court determines that



1 the defendant has regained fitness to proceed, the penal
2 proceeding shall be resumed and the defendant shall no longer be
3 committed to the custody of the director of health. In cases
4 where a defendant is charged with the offense of murder in the
5 first or second degree, attempted murder in the first or second
6 degree, or a class A felony, upon the request of the prosecuting
7 attorney or the defendant, and in consideration of information
8 provided by the defendant's clinical team, the court may order
9 that the defendant remain in the custody of the director of
10 health, for good cause shown, subject to bail or until a
11 judgment on the verdict or a finding of guilt after a plea of
12 guilty or nolo contendere. Thereafter, the court may consider a
13 request from the director of health to rescind its order
14 maintaining the defendant in the director's custody, for good
15 cause shown. [~~As used in this section, the term "qualified~~
16 ~~physician" means a physician qualified by the court for the~~
17 ~~specific evaluation ordered.] If, however, the court is of the
18 view that so much time has elapsed since the commitment or
19 release on conditions of the defendant that it would be unjust
20 to resume the proceeding, the court may dismiss the charge and:~~

21 (a) Order the defendant to be discharged;



- 1 (b) Subject to section 334-60.2 regarding involuntary
2 hospitalization criteria, order the defendant to be
3 committed to the custody of the director of health to
4 be placed in an appropriate institution for detention,
5 care, and treatment; or
- 6 (c) Subject to section 334-121 regarding assisted
7 community treatment criteria, order the defendant to
8 be released on conditions the court determines
9 necessary."

10 SECTION 5. Section 704-407.5, Hawaii Revised Statutes, is
11 amended by amending subsection (2) to read as follows:

12 "(2) The court shall appoint three qualified examiners in
13 felony cases and one qualified examiner in nonfelony cases to
14 examine and report upon the physical or mental disease,
15 disorder, or defect of the defendant at the time of the conduct.
16 In felony cases, the court shall appoint at least one
17 psychiatrist or advanced practice registered nurse and at least
18 one licensed psychologist. The third examiner may be a
19 psychiatrist, licensed psychologist, qualified advanced practice
20 registered nurse, or qualified physician. One of the three
21 examiners shall be a psychiatrist, advanced practice registered



1 nurse, or licensed psychologist designated by the director of
2 health from within the department of health. In nonfelony
3 cases, the court may appoint as examiners either a psychiatrist,
4 advanced practice registered nurse, or a licensed psychologist.
5 All examiners shall be appointed from a list of certified
6 examiners as determined by the department of health. The court,
7 in appropriate circumstances, may appoint an additional examiner
8 or examiners. The court may direct that one or more qualified
9 advanced practice registered nurses, qualified physicians, or
10 psychologists retained by the defendant be permitted to witness
11 the examination. [~~As used in this section, the term "licensed~~
12 ~~psychologist" includes psychologists exempted from licensure by~~
13 ~~section 465-3(a)(3) and "qualified physician" means a physician~~
14 ~~qualified by the court for the specific evaluation ordered.]"~~

15 SECTION 6. Section 704-409, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§704-409 Access to defendant by examiners of defendant's**
18 **choice.** When, notwithstanding the report filed pursuant to
19 section 704-404, the defendant wishes to be examined by one or
20 more qualified physicians, advanced practice registered nurses,
21 qualified advanced practice registered nurses, or other experts



1 of the defendant's own choice, such examiner or examiners shall
2 be permitted to have reasonable access to the defendant for the
3 purposes of such examination."

4 SECTION 7. Section 704-410, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

6 "(1) At the hearing pursuant to section 704-405 or upon
7 the trial, the examiners who reported pursuant to section 704-
8 404 may be called as witnesses by the prosecution, the
9 defendant, or the court. If the issue is being tried before a
10 jury, the jury may be informed that the examiners or any of them
11 were designated by the court or by the director of health at the
12 request of the court, as the case may be. If called by the
13 court, the witness shall be subject to cross-examination by the
14 prosecution and the defendant. Both the prosecution and the
15 defendant may summon any other qualified physician, advanced
16 practice registered nurse, qualified advanced practice
17 registered nurse, or licensed psychologist or other expert to
18 testify, but no one who has not examined the defendant shall be
19 competent to testify to an expert opinion with respect to the
20 physical or mental condition of the defendant, as distinguished



1 from the validity of the procedure followed by, or the general
2 scientific propositions stated by, another witness."

3 SECTION 8. Section 704-411, Hawaii Revised Statutes, is
4 amended by amending subsection (3) to read as follows:

5 "(3) When ordering a hearing pursuant to subsection (2):

6 (a) In nonfelony cases, the court shall appoint a
7 qualified examiner to examine and report upon the
8 physical and mental condition of the defendant. The
9 court may appoint either a psychiatrist or a licensed
10 psychologist. The examiner may be designated by the
11 director of health from within the department of
12 health. The examiner shall be appointed from a list
13 of certified examiners as determined by the department
14 of health. The court, in appropriate circumstances,
15 may appoint an additional examiner or examiners; and

16 (b) In felony cases, the court shall appoint three
17 qualified examiners to examine and report upon the
18 physical and mental condition of the defendant. In
19 each case, the court shall appoint at least one
20 psychiatrist and at least one licensed psychologist.
21 The third member may be a psychiatrist, a licensed



1 psychologist, advanced practice registered nurse,
2 qualified advanced practice registered nurse, or a
3 qualified physician. One of the three shall be a
4 psychiatrist, advanced practice registered nurse, or
5 licensed psychologist designated by the director of
6 health from within the department of health. The
7 three examiners shall be appointed from a list of
8 certified examiners as determined by the department of
9 health.

10 To facilitate the examination and the proceedings thereon, the
11 court may cause the defendant, if not then confined, to be
12 committed to a hospital or other suitable facility for the
13 purpose of examination for a period not exceeding thirty days or
14 a longer period as the court determines to be necessary for the
15 purpose upon written findings for good cause shown. The court
16 may direct that advanced practice registered nurses, qualified
17 advanced practice registered nurses, qualified physicians, or
18 psychologists retained by the defendant be permitted to witness
19 the examination. The examination and report and the
20 compensation of persons making or assisting in the examination
21 shall be in accordance with section 704-404(3), (5)(a) and (b),



1 (7), (8), (9), (10), and (11). [~~As used in this section, the~~
2 ~~term "licensed psychologist" includes psychologists exempted~~
3 ~~from licensure by section 465-3(a)(3) and "qualified physician"~~
4 ~~means a physician qualified by the court for the specific~~
5 ~~evaluation ordered.] "~~

6 SECTION 9. Section 704-413, Hawaii Revised Statutes, is
7 amended by amending subsection (3) to read as follows:

8 "(3) Any person granted conditional release pursuant to
9 this chapter may apply to the court ordering the conditional
10 release for discharge from, or modification of, the order
11 granting conditional release on the ground that the person is no
12 longer affected by a physical or mental disease, disorder, or
13 defect and may be discharged, or the order may be modified,
14 without danger to the person or to others. The application
15 shall be accompanied by a letter from or supporting affidavit of
16 a qualified physician, advanced practice registered nurse,
17 qualified advanced practice registered nurse, or licensed
18 psychologist. A copy of the application and letter or affidavit
19 shall be transmitted to the prosecuting attorney of the circuit
20 from which the order issued and to any persons supervising the
21 release, and the hearing on the application shall be held



1 following notice to such persons. If the court denies the
2 application, the person shall not be permitted to file another
3 application for either discharge or modification of conditional
4 release until one year after the date of the denial."

5 SECTION 10. Section 704-414, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) Upon filing of an application pursuant to section
8 704-412 for discharge or conditional release, or upon the filing
9 of an application pursuant to section 704-413 for discharge, the
10 court shall appoint three qualified examiners in felony cases,
11 and one qualified examiner in nonfelony cases, to examine and
12 report upon the physical and mental condition of the defendant.
13 In felony cases, the court shall appoint at least one
14 psychiatrist or advanced practice registered nurse and at least
15 one licensed psychologist. The third member may be a
16 psychiatrist, a licensed psychologist, advanced practice
17 registered nurse, qualified advanced practice registered nurse,
18 or a qualified physician. One of the three shall be a
19 psychiatrist, advanced practice registered nurse, or licensed
20 psychologist designated by the director of health from within
21 the department of health. The examiners shall be appointed from



1 a list of certified examiners as determined by the department of
 2 health. To facilitate the examination and the proceedings
 3 thereon, the court may cause the defendant, if not then
 4 confined, to be committed to a hospital or other suitable
 5 facility for the purpose of the examination and may direct that
 6 advanced practice registered nurses, qualified advanced practice
 7 registered nurses, qualified physicians, or psychologists
 8 retained by the defendant be permitted to witness the
 9 examination. The examination and report and the compensation of
 10 persons making or assisting in the examination shall be in
 11 accordance with section 704-404(3), (5)(a) and (b), (7), (8),
 12 (9), (10), and (11). [~~As used in this section, the term~~
 13 ~~"licensed psychologist" includes psychologists exempted from~~
 14 ~~licensure by section 465-3(a)(3) and "qualified physician" means~~
 15 ~~a physician qualified by the court for the specific evaluation~~
 16 ~~ordered.] "~~

17 SECTION 11. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect upon its approval.

20

INTRODUCED BY: *Russell H. Baker*



S.B. NO. 619

Report Title:

Advanced Practice Registered Nurses; Fitness to Proceed;
Examinations

Description:

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.

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

