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# 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 in 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 include  
16 psychiatrists, licensed psychologists, and qualified physicians.



1           Accordingly, the purpose of this Act is to improve patient  
2 access to medical care and services by specifying the  
3 circumstances under which advanced practice registered nurses  
4 may participate in the fitness to proceed process in criminal  
5 cases.

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. As used in this chapter:

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

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

18           "Qualified advanced practice registered nurse" means a  
19 person licensed pursuant to chapter 457 and qualified by the  
20 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:

8       (a) In cases where the defendant is charged with a petty  
9       misdemeanor not involving violence or attempted  
10       violence, if a court-based certified examiner is  
11       available, the court shall appoint the court-based  
12       certified examiner to examine and provide an expedited  
13       report solely upon the issue of the defendant's  
14       capacity to understand the proceedings against the  
15       defendant and defendant's ability to assist in the  
16       defendant's own defense. The court-based certified  
17       examiner shall file the examiner's report with the  
18       court within two days of the appointment of the  
19       examiner, or as soon thereafter is practicable. A  
20       hearing shall be held to determine if the defendant is



1 fit to proceed within two days of the filing of the  
2 report, or as soon thereafter as is practicable;

3 (b) In all other nonfelony cases, and where a court-based  
4 certified examiner is not available in cases under  
5 paragraph (a), the court shall appoint one qualified  
6 examiner to examine and report upon the defendant's  
7 fitness to proceed. The court may appoint as the  
8 examiner either a psychiatrist, an advanced practice  
9 registered nurse, or a licensed psychologist  
10 designated by the director of health from within the  
11 department of health; and

12 (c) In felony cases, the court shall appoint three  
13 qualified examiners to examine and report upon the  
14 defendant's fitness to proceed. The court shall  
15 appoint as examiners psychiatrists, licensed  
16 psychologists, advanced practice registered nurses,  
17 qualified advanced practice registered nurses, or  
18 qualified physicians; provided that one of the three  
19 examiners shall be a psychiatrist, advanced practice  
20 registered nurse, or licensed psychologist designated



1 by the director of health from within the department  
2 of health.

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

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



1           "(3) When the court, on its own motion or upon the  
2 application of the director of health, the prosecuting attorney,  
3 or the defendant, has reason to believe that the defendant has  
4 regained fitness to proceed, for a defendant charged with the  
5 offense of murder in the first or second degree, attempted  
6 murder in the first or second degree, or a class A felony, the  
7 court shall appoint three qualified examiners and may appoint in  
8 all other cases one qualified examiner, to examine and report  
9 upon the physical and mental condition of the defendant. In  
10 cases in which the defendant has been charged with murder in the  
11 first or second degree, attempted murder in the first or second  
12 degree, or a class A felony, the court shall appoint as  
13 examiners at least one psychiatrist and at least one licensed  
14 psychologist. The third examiner may be a psychiatrist,  
15 licensed psychologist, advanced practice registered nurse,  
16 qualified advanced practice registered nurse, or qualified  
17 physician. One of the three examiners shall be a psychiatrist  
18 or licensed psychologist designated by the director of health  
19 from within the department of health. In all other cases, the  
20 one qualified examiner shall be a psychiatrist or licensed  
21 psychologist designated by the director of health from within



1 the department of health. The court, in appropriate  
2 circumstances, may appoint an additional examiner or examiners.  
3 All examiners shall be appointed from a list of certified  
4 examiners as determined by the department of health. After a  
5 hearing, if a hearing is requested, if the court determines that  
6 the defendant has regained fitness to proceed, the penal  
7 proceeding shall be resumed and the defendant shall no longer be  
8 committed to the custody of the director of health. In cases  
9 where a defendant is charged with the offense of murder in the  
10 first or second degree, attempted murder in the first or second  
11 degree, or a class A felony, upon the request of the prosecuting  
12 attorney or the defendant, and in consideration of information  
13 provided by the defendant's clinical team, the court may order  
14 that the defendant remain in the custody of the director of  
15 health, for good cause shown, subject to bail or until a  
16 judgment on the verdict or a finding of guilt after a plea of  
17 guilty or nolo contendere. Thereafter, the court may consider a  
18 request from the director of health to rescind its order  
19 maintaining the defendant in the director's custody, for good  
20 cause shown. ~~[As used in this section, the term "qualified~~  
21 ~~physician" means a physician qualified by the court for the~~



1 ~~specific evaluation ordered.]~~ If, however, the court is of the  
2 view that so much time has elapsed since the commitment or  
3 release on conditions of the defendant that it would be unjust  
4 to resume the proceeding, the court may dismiss the charge and:

5 (a) Order the defendant to be discharged;

6 (b) Subject to section 334-60.2 regarding involuntary  
7 hospitalization criteria, order the defendant to be  
8 committed to the custody of the director of health to  
9 be placed in an appropriate institution for detention,  
10 care, and treatment; or

11 (c) Subject to section 334-121 regarding assisted  
12 community treatment criteria, order the defendant to  
13 be released on conditions the court determines  
14 necessary."

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

17 "(2) For those cases not diverted by an agreement pursuant  
18 to subsection (1), the court shall appoint three qualified  
19 examiners for class A and class B felonies, as well as for class  
20 C felonies involving violence or attempted violence, and one  
21 qualified examiner in nonfelony cases to examine and report upon



1 the physical or mental disease, disorder, or defect of the  
2 defendant at the time of the conduct. For class C felonies not  
3 involving violence or attempted violence, the court may appoint  
4 one or three qualified examiners to examine and report upon the  
5 physical or mental disease, disorder, or defect of the defendant  
6 at the time of the conduct. In cases where the court appoints  
7 three examiners, the court shall appoint as examiners  
8 psychiatrists, licensed psychologists, advanced practice  
9 registered nurses, qualified advanced practice registered  
10 nurses, or qualified physicians; provided that one of the three  
11 examiners shall be a psychiatrist, advanced practice registered  
12 nurse, or licensed psychologist designated by the director of  
13 health from within the department of health. In nonfelony cases  
14 and class C felonies not involving violence or attempted  
15 violence where one examiner is appointed, the court may appoint  
16 as examiners either a psychiatrist, advanced practice registered  
17 nurse, or a licensed psychologist. The examiner may be  
18 designated by the director of health from within the department  
19 of health. All examiners shall be appointed from a list of  
20 certified examiners as determined by the department of health.  
21 The court, in appropriate circumstances, may appoint an



1 additional examiner or examiners. The court may direct that one  
2 or more qualified physicians or psychologists retained by the  
3 defendant be permitted to witness the examination. [~~As used in  
4 this section, the term "licensed psychologist" includes  
5 psychologists exempted from licensure by section 465-3(a)(3) and  
6 "qualified physician" means a physician qualified by the court  
7 for the specific evaluation ordered.]~~"]

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

10 "§704-409 Access to defendant by examiners of defendant's  
11 choice. When, notwithstanding the report filed pursuant to  
12 section 704-404, the defendant wishes to be examined by one or  
13 more qualified physicians, advanced practice registered nurses,  
14 qualified advanced practice registered nurses, or other experts  
15 of the defendant's own choice, such examiner or examiners shall  
16 be permitted to have reasonable access to the defendant for the  
17 purposes of such examination."

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

20 "(1) At the hearing pursuant to section 704-405 or upon  
21 the trial, the examiners who reported pursuant to section



1 704-404 may be called as witnesses by the prosecution, the  
2 defendant, or the court. If the issue is being tried before a  
3 jury, the jury may be informed that the examiners or any of them  
4 were designated by the court or by the director of health at the  
5 request of the court, as the case may be. If called by the  
6 court, the witness shall be subject to cross-examination by the  
7 prosecution and the defendant. Both the prosecution and the  
8 defendant may summon any other qualified physician, advanced  
9 practice registered nurse, qualified advanced practice  
10 registered nurse, or licensed psychologist or other expert to  
11 testify, but no one who has not examined the defendant shall be  
12 competent to testify to an expert opinion with respect to the  
13 physical or mental condition of the defendant, as distinguished  
14 from the validity of the procedure followed by, or the general  
15 scientific propositions stated by, another witness."

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

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

19 (a) In nonfelony cases, the court shall appoint a  
20 qualified examiner to examine and report upon the  
21 physical and mental condition of the defendant. The



1 court may appoint either a psychiatrist or a licensed  
2 psychologist. The examiner may be designated by the  
3 director of health from within the department of  
4 health. The examiner shall be appointed from a list  
5 of certified examiners as determined by the department  
6 of health. The court, in appropriate circumstances,  
7 may appoint an additional examiner or examiners; and  
8 (b) In felony cases, the court shall appoint three  
9 qualified examiners to examine and report upon the  
10 physical and mental condition of the defendant. In  
11 each case, the court shall appoint as examiners  
12 psychiatrists, licensed psychologists, advanced  
13 practice registered nurses, qualified advanced  
14 practice registered nurses, or qualified physicians;  
15 provided that one of the three shall be a  
16 psychiatrist, advanced practice registered nurse, or  
17 licensed psychologist designated by the director of  
18 health from within the department of health. The  
19 three examiners shall be appointed from a list of  
20 certified examiners as determined by the department of  
21 health.



1 To facilitate the examination and the proceedings thereon, the  
2 court may cause the defendant, if not then confined, to be  
3 committed to a hospital or other suitable facility for the  
4 purpose of examination for a period not exceeding thirty days or  
5 a longer period as the court determines to be necessary for the  
6 purpose upon written findings for good cause shown. The court  
7 may direct that qualified physicians or psychologists retained  
8 by the defendant be permitted to witness the examination. The  
9 examination and report and the compensation of persons making or  
10 assisting in the examination shall be in accordance with section  
11 704-404(3) [7] i; (5) (a), (b), (d), and (e) [7] i; (7) [7] i; (8) [7] i;  
12 (9) [7] i; (10) [7] i; 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 9. Section 704-413, Hawaii Revised Statutes, is  
18 amended by amending subsection (3) to read as follows:

19 "(3) Any person granted conditional release pursuant to  
20 this chapter may apply to the court ordering the conditional  
21 release for discharge from, or modification of, the order



1 granting conditional release on the ground that the person is no  
2 longer affected by a physical or mental disease, disorder, or  
3 defect and may be discharged, or the order may be modified,  
4 without danger to the person or to others. The application  
5 shall be accompanied by a letter from or supporting affidavit of  
6 a qualified physician, advanced practice registered nurse,  
7 qualified advanced practice registered nurse, or licensed  
8 psychologist. A copy of the application and letter or affidavit  
9 shall be transmitted to the prosecuting attorney of the circuit  
10 from which the order issued and to any persons supervising the  
11 release, and the hearing on the application shall be held  
12 following notice to such persons. If the court denies the  
13 application, the person shall not be permitted to file another  
14 application for either discharge or modification of conditional  
15 release until one year after the date of the denial."

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

18 "(1) Upon filing of an application pursuant to section  
19 704-412 for discharge or conditional release, or upon the filing  
20 of an application pursuant to section 704-413 for discharge, the  
21 court shall appoint three qualified examiners in felony cases,



1 and one qualified examiner in nonfelony cases, to examine and  
2 report upon the physical and mental condition of the defendant.  
3 In felony cases, the court shall appoint as examiners  
4 psychiatrists, licensed psychologists, advanced practice  
5 registered nurses, qualified advanced practice registered  
6 nurses, or qualified physicians; provided that one of the three  
7 shall be a psychiatrist, advanced practice registered nurse, or  
8 licensed psychologist designated by the director of health from  
9 within the department of health. The examiners shall be  
10 appointed from a list of certified examiners as determined by  
11 the department of health. To facilitate the examination and the  
12 proceedings thereon, the court may cause the defendant, if not  
13 then confined, to be committed to a hospital or other suitable  
14 facility for the purpose of the examination and may direct that  
15 qualified physicians or psychologists retained by the defendant  
16 be permitted to witness the examination. The examination and  
17 report and the compensation of persons making or assisting in  
18 the examination shall be in accordance with section  
19 704-404(3) [redacted]; (5) (a), (b), (d), and (e) [redacted]; (7) [redacted]; (8) [redacted];  
20 (9) [redacted]; (10) [redacted]; and (11). ~~[As used in this section, the term~~  
21 ~~"licensed psychologist" includes psychologists exempted from~~



1 ~~licensure by section 465 3(a)(3) and "qualified physician" means~~  
2 ~~a physician qualified by the court for the specific evaluation~~  
3 ~~ordered.] "~~

4 SECTION 11. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 12. This Act shall take effect on July 1, 2050.



**Report Title:**

Advanced Practice Registered Nurses; Fitness to Proceed;  
Examinations

**Description:**

Amends provisions concerning fitness to proceed examinations in criminal proceedings to specify circumstances in which 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 may participate. Takes effect 7/1/2050. (SD2)

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

