



1 "Firearm" means any weapon for which the operating force is  
2 an explosive, including but not limited to pistols, revolvers,  
3 rifles, shotguns, automatic firearms, noxious gas projectors,  
4 mortars, bombs, and cannon.

5 "Law enforcement agency" means any county police department  
6 or department of public safety sheriff division.

7 "Mental health professional" means a psychologist,  
8 psychiatrist, physician, social worker, or counselor.

9 "Person who poses a threat of physical violence" means a  
10 person who communicates to a mental health professional a  
11 serious threat of physical violence against a reasonably  
12 identifiable victim or victims and who, pursuant to section  
13 -4, is prohibited from:

14 (1) Possessing, controlling, or having in the person's  
15 custody any firearm or other dangerous or deadly  
16 weapon; and

17 (2) Purchasing or receiving, or attempting to purchase or  
18 receive, any firearm or other dangerous or deadly  
19 weapon.

20 § -2 **Persons involuntarily hospitalized; firearms;**  
21 **dangerous or deadly weapons.** (a) A person committed to a  
22 psychiatric facility for involuntary hospitalization under



1 chapter 334 who, in the opinion of a licensed psychologist who  
2 is primarily responsible for the patient's treatment, is a  
3 danger to self or danger to others, shall not possess, control,  
4 or have in the person's custody any firearm or other dangerous  
5 or deadly weapon; or purchase or receive, or attempt to purchase  
6 or receive, any firearm or any other dangerous or deadly weapon,  
7 upon release from the psychiatric facility unless:

8 (1) In the opinion of the licensed psychologist who is  
9 primarily responsible for the person's treatment, the  
10 person is no longer a danger to self or danger to  
11 others;

12 (2) The person provides medical documentation to the  
13 department of public safety that the person is not  
14 suffering from any addiction, abuse, dependence,  
15 mental disease, disorder, or defect; and

16 (3) The person is not otherwise disqualified from  
17 ownership or possession of a firearm or other  
18 dangerous or deadly weapon by any other applicable  
19 provision of law, including but not limited to chapter  
20 134.

21 (b) Upon commitment of a person described in subsection

22 (a), the psychiatric facility shall make a report to the



1 department of public safety that contains the following  
2 information:

- 3 (1) Identification of the individual;
- 4 (2) Explanation of the treating psychologist's diagnosis;
- 5 and
- 6 (3) Explanation of the danger the person poses.

7 (c) The department shall maintain a list of persons who  
8 are prohibited from possessing, having custody or control over,  
9 receiving, purchasing, or attempting to receive or purchase any  
10 firearm or other dangerous or deadly weapon pursuant to  
11 subsection (a).

12 (d) Violation of this section is a class felony.

13 **§ -3 Confiscation and custody of firearms or other**  
14 **dangerous or deadly weapons; procedure for return.** (a) When a  
15 person who has been detained or apprehended for examination of  
16 that person's mental condition is found to own, have in the  
17 person's possession, or have under the person's control any  
18 firearm or any other dangerous or deadly weapon, the firearm or  
19 other dangerous or deadly weapon shall be confiscated by a law  
20 enforcement agency, which shall retain custody of the firearm or  
21 other dangerous or deadly weapon as necessary and shall notify



1 the person of the procedure for the return of any firearm or  
2 other dangerous or deadly weapon that has been confiscated.

3 (b) If a person on the list maintained by the department  
4 of public safety pursuant to section -2(c), upon release from  
5 the psychiatric facility, is found to possess, have custody or  
6 control over, receive, or purchase any firearm or other  
7 dangerous or deadly weapon in violation of section -2, the  
8 violation of section -2 shall constitute probable cause for  
9 the issuance of a search warrant for the location and  
10 confiscation of firearms or other dangerous or deadly weapons  
11 owned, controlled, or possessed by the person at any place the  
12 person keeps or stores any firearm or other dangerous or deadly  
13 weapon.

14 § -4 **Communication of threat; firearms; dangerous or**  
15 **deadly weapons; report; notice.** (a) Any person who  
16 communicates to a mental health professional a serious threat of  
17 physical violence against a reasonably identifiable victim or  
18 victims shall be prohibited from:

19 (1) Possessing, controlling, or having in the person's  
20 custody any firearm or other dangerous or deadly  
21 weapon; and



1           (2) Purchasing or receiving, or attempting to purchase or  
2           receive, any firearm or other dangerous or deadly  
3           weapon.

4           (b) A mental health professional who receives a  
5           communication from a person who threatens serious physical  
6           violence against a reasonably identifiable victim or victims  
7           shall immediately make a report, under penalty of perjury, to a  
8           law enforcement agency that:

- 9           (1) Identifies the person making the threat;  
10          (2) Identifies the person or persons against whom the  
11          threat was made;  
12          (3) Describes in detail the specific threat made; and  
13          (4) Specifies the date, time, place, and manner in which  
14          the threat was made.

15          (c) Any law enforcement agency that receives a report from  
16          a mental health professional shall immediately:

- 17          (1) Communicate all of the information in the report to  
18          the department of public safety;  
19          (2) Take appropriate action to ensure the safety of the  
20          person or persons threatened; and  
21          (3) Pursuant to section       -5, confiscate and secure any  
22          firearms or other dangerous or deadly weapons owned,



1 controlled, or possessed by the person at any place  
2 the person keeps or stores any firearms or other  
3 dangerous or deadly weapons.

4 (d) Any law enforcement agency that receives a report from  
5 a mental health professional shall within twenty-four hours of  
6 receipt of the report:

7 (1) Make a written record of all of the information  
8 reported by the mental health professional; and

9 (2) Transmit a written report to the department of public  
10 safety.

11 (e) Upon receipt of a report of a threat from a law  
12 enforcement agency, the department of public safety shall notify  
13 by certified mail, return receipt requested, the person who  
14 poses a threat of physical violence of the following:

15 (1) That the person is prohibited from possessing, having  
16 custody or control over, receiving, or purchasing any  
17 firearm or other dangerous or deadly weapon;

18 (2) That the person must immediately surrender any  
19 firearms or other dangerous or deadly weapons owned,  
20 controlled, or possessed by the person; and

21 (3) That any license for firearms or any other dangerous  
22 or deadly weapon has been revoked.



1 (f) There shall be no criminal or civil liability for any  
2 mental health professional, acting in good faith, who makes a  
3 report pursuant to subsection (b).

4 (g) Making or submitting a false report under this section  
5 is a misdemeanor.

6 (h) A violation of this section is a class felony.

7 § -5 **Seizure of firearms or other dangerous or deadly**  
8 **weapons; revocation of license.** When a person is identified as  
9 a person who poses a threat of serious physical violence:

10 (1) The communication from the mental health professional  
11 to the law enforcement agency pursuant to section  
12 -4, shall constitute exigent circumstances for the  
13 immediate location and confiscation of firearms or  
14 other dangerous or deadly weapons owned, possessed, or  
15 controlled by the person making a threat under this  
16 section at any place the person keeps or stores any  
17 firearm or other dangerous or deadly weapon;

18 (2) The department of public safety and the local law  
19 enforcement agency with jurisdiction over the matter  
20 shall immediately confiscate and secure any firearms  
21 and other dangerous or deadly weapons owned,  
22 controlled, or possessed by the person at any place





1 the person keeps or stores any firearm or other  
2 dangerous or deadly weapon; and

3 (3) Any license for a firearm or other dangerous or deadly  
4 weapon issued to the person shall be immediately  
5 revoked.

6 § -6 **Selling or supplying firearms or other dangerous or**  
7 **deadly weapons.** (a) Any person who knowingly sells, supplies,  
8 gives, or allows possession or control of a firearm to any  
9 person who poses a threat of serious physical violence is guilty  
10 of a class felony.

11 (b) Any person who knowingly sells, supplies, gives, or  
12 allows possession or control of a dangerous or deadly weapon to  
13 any person who poses a threat of serious physical violence is  
14 guilty of a class felony.

15 § -7 **Maintenance of records.** (a) The department of  
16 public safety shall develop and maintain:

17 (1) A database of records and reports submitted in  
18 connection with this chapter, which shall be  
19 accessible to all mental health professionals and law  
20 enforcement agencies;

21 (2) A list of persons prohibited from possessing, having  
22 custody or control over, receiving, purchasing, or



1 attempting to receive or purchase firearms and other  
2 dangerous or deadly weapons under this chapter; and

3 (3) A list of persons whose license has been revoked under  
4 this chapter.

5 (b) The department of public safety shall allow  
6 verification of the identity of a person listed in subsection

7 (a) by:

8 (1) Law enforcement agencies;

9 (2) Mental health professionals; and

10 (3) Wholesalers and retailers of firearms or other  
11 dangerous or deadly weapons.

12 § -8 Procedures for confiscation, custody, and return of  
13 firearms and other dangerous or deadly weapons. The department  
14 of public safety shall adopt rules to establish procedures for  
15 confiscation, custody, and return of firearms and other  
16 dangerous or deadly weapons confiscated pursuant to this  
17 chapter."

18 SECTION 2. Section 626-1, Hawaii Revised Statutes, is  
19 amended by amending rule 504, subsection (d), to read as  
20 follows:

21 "(d) Exceptions.



- 1           (1) Proceedings for hospitalization. There is no  
2           privilege under this rule for communications relevant  
3           to an issue in proceedings to hospitalize the patient  
4           for mental illness or substance abuse, or in  
5           proceedings for the discharge or release of a patient  
6           previously hospitalized for mental illness or  
7           substance abuse.
- 8           (2) Examination by order of court. If the court orders an  
9           examination of the physical, mental, or emotional  
10          condition of a patient, whether a party or a witness,  
11          communications made in the course thereof are not  
12          privileged under this rule with respect to the  
13          particular purpose for which the examination is  
14          ordered unless the court orders otherwise.
- 15          (3) Condition an element of claim or defense. There is no  
16          privilege under this rule as to a communication  
17          relevant to the physical, mental, or emotional  
18          condition of the patient in any proceeding in which  
19          the patient relies upon the condition as an element of  
20          the patient's claim or defense or, after the patient's  
21          death, in any proceeding in which any party relies



1           upon the condition as an element of the party's claim  
2           or defense.

3           (4) Proceedings against physician. There is no privilege  
4           under this rule in any administrative or judicial  
5           proceeding in which the competency, practitioner's  
6           license, or practice of the physician is at issue,  
7           provided that the identifying data of the patients  
8           whose records are admitted into evidence shall be kept  
9           confidential unless waived by the patient. The  
10          administrative agency, board, or commission may close  
11          the proceeding to the public to protect the  
12          confidentiality of the patient.

13          (5) Furtherance of crime or tort. There is no privilege  
14          under this rule if the services of the physician were  
15          sought, obtained, or used to enable or aid anyone to  
16          commit or plan to commit what the patient knew or  
17          reasonably should have known to be a crime or tort.

18          (6) Prevention of crime or tort. There is no privilege  
19          under this rule as to a communication reflecting the  
20          patient's intent to commit a criminal or tortious act  
21          that the physician reasonably believes is likely to  
22          result in death or substantial bodily harm.



1       (7) Communications under the mental health safety program.  
2           There is no privilege under this rule as to any  
3           communication made pursuant to the mental health  
4           safety program under chapter \_\_\_\_\_."

5       SECTION 3. Section 626-1, Hawaii Revised Statutes, is  
6 amended by amending rule 504.1, subsection (d), to read as  
7 follows:

8       "(d) Exceptions.

9       (1) Proceedings for hospitalization. There is no  
10       privilege under this rule for communications relevant  
11       to an issue in proceedings to hospitalize the client  
12       for mental illness or substance abuse, or in  
13       proceedings for the discharge or release of a client  
14       previously hospitalized for mental illness or  
15       substance abuse.

16       (2) Examination by order of court. If the court orders an  
17       examination of the physical, mental, or emotional  
18       condition of a client, whether a party or a witness,  
19       communications made in the course thereof are not  
20       privileged under this rule with respect to the  
21       particular purpose for which the examination is  
22       ordered unless the court orders otherwise.



- 1           (3) Condition an element of claim or defense. There is no  
2           privilege under this rule as to a communication  
3           relevant to the physical, mental, or emotional  
4           condition of the client in any proceeding in which the  
5           client relies upon the condition as an element of the  
6           client's claim or defense or, after the client's  
7           death, in any proceeding in which any party relies  
8           upon the condition as an element of the party's claim  
9           or defense.
- 10          (4) Proceedings against psychologist. There is no  
11          privilege under this rule in any administrative or  
12          judicial proceeding in which the competency,  
13          practitioner's license, or practice of the  
14          psychologist is at issue, provided that the  
15          identifying data of the clients whose records are  
16          admitted into evidence shall be kept confidential  
17          unless waived by the client. The administrative  
18          agency, board, or commission may close the proceeding  
19          to the public to protect the confidentiality of the  
20          client.
- 21          (5) Furtherance of crime or tort. There is no privilege  
22          under this rule if the services of the psychologist



1 were sought, obtained, or used to enable or aid anyone  
2 to commit or plan to commit what the client knew or  
3 reasonably should have known to be a crime or tort.

4 (6) Prevention of crime or tort. There is no privilege  
5 under this rule as to a communication reflecting the  
6 client's intent to commit a criminal or tortious act  
7 that the psychologist reasonably believes is likely to  
8 result in death or substantial bodily harm.

9 (7) Communications under the mental health safety program.  
10 There is no privilege under this rule as to any  
11 communication made pursuant to the mental health  
12 safety program under chapter \_\_\_\_\_."

13 SECTION 4. Section 626-1, Hawaii Revised Statutes, is  
14 amended by amending rule 505.5, subsection (d), to read as  
15 follows:

16 "(d) Exceptions. There is no privilege under this rule:

17 (1) Perjured testimony by victim. If the victim counselor  
18 reasonably believes that the victim has given perjured  
19 testimony and a party to the proceeding has made an  
20 offer of proof that perjury may have been committed.

21 (2) Physical appearance and condition of victim. In  
22 matters of proof concerning the physical appearance



1 and condition of the victim at the time of the alleged  
2 crime.

3 (3) Breach of duty by victim counselor or victim  
4 counseling program. As to a communication relevant to  
5 an issue of breach of duty by the victim counselor or  
6 victim counseling program to the victim.

7 (4) Mandatory reporting. To relieve victim counselors of  
8 any duty to refuse to report child abuse or neglect  
9 under chapter 350, domestic abuse under chapter 586,  
10 or abuse of a vulnerable adult under part X of chapter  
11 346, and to refuse to provide evidence in child abuse  
12 proceedings under chapter 587A.

13 (5) Proceedings for hospitalization. For communications  
14 relevant to an issue in proceedings to hospitalize the  
15 victim for mental illness or substance abuse, or in  
16 proceedings for the discharge or release of a victim  
17 previously hospitalized for mental illness or  
18 substance abuse.

19 (6) Examination by order of court. If the court orders an  
20 examination of the physical, mental, or emotional  
21 condition of a victim, whether a party or a witness,  
22 communications made in the course thereof are not





1 privileged under this rule with respect to the  
2 particular purpose of which the examination is ordered  
3 unless the court orders otherwise.

4 (7) Condition an element of claim or defense. As to a  
5 communication relevant to the physical, mental, or  
6 emotional condition of the victim in any proceeding in  
7 which the victim relies upon the condition as an  
8 element of the victim's claim or defense or, after the  
9 victim's death, in any proceeding in which any party  
10 relies upon the condition as an element of the party's  
11 claim or defense.

12 (8) Proceedings against the victim counselor. In any  
13 administrative or judicial proceeding in which the  
14 competency or practice of the victim counselor or of  
15 the victim counseling program is at issue, provided  
16 that the identifying data of the victims whose records  
17 are admitted into evidence shall be kept confidential  
18 unless waived by the victim. The administrative  
19 agency, board or commission shall close to the public  
20 any portion of a proceeding, as necessary to protect  
21 the confidentiality of the victim.



1        (9) Communications under the mental health safety program.  
 2        There is no privilege under this rule as to any  
 3        communication made pursuant to the mental health  
 4        safety program under chapter \_\_\_\_\_."

5        SECTION 5. This Act does not affect rights and duties that  
 6        matured, penalties that were incurred, and proceedings that were  
 7        begun before its effective date.

8        SECTION 6. If any provision of this Act, or the  
 9        application thereof to any person or circumstance, is held  
 10       invalid, the invalidity does not affect other provisions or  
 11       applications of the Act that can be given effect without the  
 12       invalid provision or application, and to this end the provisions  
 13       of this Act are severable.

14       SECTION 7. New statutory material is underscored.

15       SECTION 8. This Act shall take effect upon its approval.

16

INTRODUCED BY: John Green

*Therese Chun*

*Prodda Puler*

*Clarence K. Mochizuki*



**Report Title:**

Mental Health; Firearms; Dangerous or Deadly Weapons

**Description:**

Prohibits any person who is a danger to self or danger to others from possessing, having custody or control of, receiving, purchasing, or attempting to receive or purchase firearms or other dangerous or deadly weapons. Creates a reporting system for persons who seriously threaten a readily identifiable person or persons to a mental health professional. Requires the department of public safety to create a database and list of persons prohibited from possessing, having custody or control of, receiving, purchasing, or attempting to receive or purchase firearms and other dangerous or deadly weapons, which will be accessible to law enforcement, mental health professionals, and sellers of firearms. Requires the department of public safety to make a list of persons whose license for firearms or other dangerous or deadly weapons has been revoked. Excepts any communication under the Act from applicable privileges.

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

