

**SB932**

**LATE**

**TESTIMONY**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 932, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

SENATE COMMITTEES ON HEALTH AND ON PUBLIC SAFETY,  
INTERGOVERNMENTAL AND MILITARY AFFAIRS

**DATE:** Friday, February 8, 2013 **TIME:** 1:35 p.m.

**LOCATION:** State Capitol, Room

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Andrea J. Armitage, Deputy Attorney General

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Chairs Green and Espero and Members of the Committees:

The Department of the Attorney General supports the intent of this bill to protect the public by prohibiting any person who is a danger to others or self from possessing, having custody or control of, receiving, purchasing, or attempting to receive or purchase a firearm or other deadly weapon. We have concerns, however, that (1) certain of the proposed provisions may be overbroad and violate constitutionally and statutorily protected privacy rights of individuals, and (2) the implementation of the bill's provisions may result in making mental health records more easily accessible, increasing the risk that such records cannot be adequately safeguarded against misuse or abuse.

This bill creates a "mental health safety program" that would prohibit persons who are mentally ill, and who pose a threat of physical violence, from possessing firearms and other deadly weapons. It establishes a database of these persons that law enforcement and firearm sellers can access. Specifically, the measure:

- Prohibits from having a firearm or dangerous or deadly weapon persons who have been involuntarily civilly committed to a psychiatric hospital and who have communicated a serious threat or attempt to injure another person or threatened suicide with the use of a firearm or other dangerous or deadly weapon;
- Requires the Department of Public Safety ("PSD") to maintain a database of persons who are ineligible to possess a firearm or dangerous or deadly weapon;
- Requires psychiatric hospitals to report to PSD information on their patients who have been involuntarily civilly committed to the hospital as dangerous to themselves or others

using a firearm or dangerous or deadly weapon. This information is then to be included in PSD's database;

- Requires a mental health professional who has received a communication from a patient that includes a serious threat of harm to a reasonably identifiable victim or victims to report information about that patient to a law enforcement agency. The law enforcement agency would then pass that information on to PSD to be included in its database. Thereafter, PSD must send a letter to the patient stating that that person may not own a firearm, must surrender all firearms in the person's possession, and that all firearm licenses for that person are revoked;
- Provides that law enforcement agencies confiscate all firearms in the possession of a person who poses a threat of serious physical harm to others;
- Makes it a felony to sell a firearm or deadly weapon to any person whose name is in PSD's database;
- Requires PSD to make the records and reports in its database accessible to all mental health professionals and law enforcement agencies, and allow verification by those entities as well as wholesalers and retailers of firearms and other dangerous or deadly weapons; and
- Excludes communications between patients who make serious threats of harm to others and their mental health care providers from any applicable privileges.

We appreciate the way this bill narrowly defines the information to be placed in a database to be used by others, in order to prevent potentially dangerous people from obtaining firearms and other dangerous weapons. The measure limits inclusion in the database to persons who have made threats of harm to others or to themselves that include the use of a firearm or dangerous or deadly weapon. The database would also include persons who have made serious threats of physical violence against reasonably identifiable individuals.

Nevertheless, our department believes an approach that allows law enforcement to find out, by way of the applicant's consent, whether an applicant for a permit has a mental illness or any other medical reason why the applicant should not be granted a firearms permit, is preferable.

### **Privacy and Security Concerns**

Unlike the United States Constitution, the Hawaii State Constitution provides explicitly for the people's right to privacy. Article 1, section 6 provides: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right." Since 1967, Hawaii has taken the clear position that individually identifiable mental health information, in particular, is to be kept confidential. Section 334-5, Hawaii Revised Statutes (HRS), which was enacted that year, prohibits the disclosure of individuals' mental health records except under six very narrowly defined circumstances. Section 334-5, HRS, is stricter with respect to mental health records than the Health Information Portability and Accountability Act of 1996 (HIPAA). With the passage of the Health Care Privacy Harmonization Act (codified in chapter 323B, HRS) last session, most health care providers affected by this bill will be covered by HIPAA, and not section 334-5, HRS. However, the Hawaii State Hospital is not a HIPAA-covered entity, and thus, must still abide by the stricter provisions of section 334-5.

HIPAA allows for the disclosure of protected health information, including mental health information, to law enforcement to "prevent or lessen a serious and imminent threat to the health and safety of a person or to the public." 45 C.F.R. §164.512(j)(1)(i). Section 334-5, HRS, does not. However, it is not clear that even HIPAA would allow the disclosure of mental health information to be placed in a database to be utilized by law enforcement when there is no longer, or not yet, a serious or imminent threat to the health and safety of someone or the public by the individual whose mental health records are being used or disclosed. People who are confined in a hospital would not be able to obtain a firearm and arguably would not present an imminent threat to anyone through the use of a firearm until they are released. If they are released, it is because they are no longer considered imminently dangerous to themselves or others.

What is clear is that HIPAA does not provide for weapons salespersons to have access to mental health information in a database. Even if they only obtained "verification" of the person's name in the database, if the database is solely for persons with mental health issues then confirming that a person's name is in the database is tantamount to disclosing mental health information. We are concerned that creating a database of information on mentally ill people to

which law enforcement and possibly firearms wholesalers and retailers have access could violate HIPAA, and would contradict the State's clear intention to protect mental health records. And depending upon the technical, physical, and administrative safeguards implemented, there could be significant risks for violating a person's privacy rights if there was a breach of those safeguards. Any breach of such safeguards may create liabilities and may trigger reporting requirements. Furthermore, the database is likely to contain unnecessary mental health information on persons who would not apply for a gun permit, yet under this provision as written, information on their condition would be available to law enforcement personnel and potentially firearms sellers.

#### **Alternative Approach**

We believe that an alternative approach of investigating only the mental health status of persons applying for firearm permits, or who already possess such permits, by way of their signed authorizations, would avoid the need for, and risk of, establishing the type of database this bill envisions and would be more efficient and effective. Currently, applicants for firearms permits must fill out an application that includes contact information about the applicant's health care provider (Oahu only) and mental health care provider (all counties). Applicants also must complete and sign an authorization that would allow the applicant's medical providers to share information relevant to the firearms application with law enforcement, as well as an authorization allowing the Department of Health, Adult Mental Health Division (AMHD), to release information it may have on the applicant to the law enforcement agency. Before issuing a gun permit, the county police departments do two things. They:

- (1) Send a letter, along with the signed authorization, to the doctors named in the application asking if they "have personal knowledge which might reflect on your patient's ability to safely own and operate a firearm," and if so, request that the doctors send that information in the form of a letter to the law enforcement agency; and
- (2) Send the names and authorizations of all firearm applicants to AMHD. AMHD compares the names given to them with its database of persons who have obtained mental health services from AMHD. If a match is found, AMHD tells the respective law enforcement agency. The law enforcement agency then sends a letter to the

applicant telling the applicant that the application is denied based on the information from AMHD unless the applicant can provide a letter from the applicant's current provider stating that the applicant is capable of owning and operating a firearm in a safe manner and without threat to an individual or the public.

This process puts the onus on the applicant to show that the applicant may safely own and operate a firearm before obtaining the license, and all inquiry is done pursuant to a legitimate authorization from the applicant. The process comports with HIPAA and section 334-5, HRS. However, the current process is also somewhat limited, in that it only finds applicants who have admitted to having a mental health provider, or who have had mental health treatment from the State. Therefore, we suggest exploring ways to obtain information from the private sector of mental health providers, as well as from AMHD, pursuant to these authorizations. This would provide a more comprehensive system of background checks. We would be happy to work with you and your Committees to develop such a plan.

#### **Specific Concerns about the Bill**

If the Committees wish to pass this measure, we respectfully suggest several amendments to reduce the risk of privacy violations and to aid with implementation. They are:

- (A) In section 1 of the proposed new chapter, on page 1 of the bill, we recommend against redefining "danger to others" and "danger to self." Those are terms of art widely used in the medical and mental health communities and are defined in chapter 334. They are among the criteria used in chapter 334 to commit an individual civilly to a psychiatric facility, a function very different from the function they would serve here in identifying individuals who should not be allowed to possess guns. To avoid confusion between the concepts among those who must apply them, we suggest that the measure spell out exactly what is meant in the provisions that use those terms or use different terms to mean the same thing; for example, on page 3, line 3, replace "danger to self or danger to others" with "has made a serious threat or attempt to injure another person or made a serious threat of, or attempted suicide, with the use of a firearm or other dangerous or deadly weapon."
- (B) Section \_\_\_-2 of the proposed chapter that begins at the bottom of page 2 provides for the prohibition on firearm ownership of the patient, and reporting by the hospital

to PSD, for anyone involuntarily civilly committed to a hospital pursuant to chapter 334. However, many people are committed “to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment” when they are found to be unfit to proceed, pursuant to section 704-406, HRS. This is a forensic commitment rather than a civil one, and the Committees may wish to consider including this type of “involuntary” commitment in this provision as well. Please note that persons who are committed to the custody of the Director of Health subsequent to an acquittal on the grounds of mental disease, disorder, or defect pursuant to section 704-411, HRS, are already prohibited from owning a firearm under section 134-7(c)(2), HRS.

- (C) Further, in that section on page 3, line 1, we recommend replacing “licensed psychologist” with “mental health professional,” and elsewhere in the bill when the term “psychologist” or any other single type of mental health professional is used. As the defined term “mental health professional” indicates (page 2, lines 7-8), many different types of health care providers may be involved with a patient’s care. In this circumstance, it would more than likely be a psychiatrist rather than a psychologist treating a person involuntarily committed to a psychiatric hospital.
- (D) On page 4, line 4, it is unclear what the purpose is of requiring the psychiatric facility to give PSD an explanation of the treating psychologist’s diagnosis. This information does not seem relevant to the issue of firearm permitting, and as mentioned above, may not comport with Hawaii’s historical concern for the confidentiality of mental health records or with HIPAA. We believe this provision should be deleted.
- (E) On page 4, line 12, it is unclear who would be committing a felony by violating this section. The section imposes duties on psychiatric facilities and PSD. If the penalty is intended to apply to certain individuals, that should be made clear.
- (F) Section \_\_\_-3 of the proposed chapter, on page 4, discusses persons who have been “detained or apprehended for examination of that person’s mental condition,” but does not specify pursuant to which statutes. They could be persons forensically committed to the hospital for examinations to determine fitness to proceed under section 704-404, HRS, or they could be persons to be evaluated under the civil

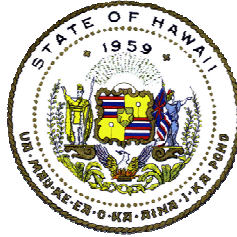
- commitment statutes in part IV of chapter 334. We suggest specifying the relevant statutes here.
- (G) On page 8, line 6, it is unclear who would be committing a felony by violating this section, and it is also unclear what behavior would constitute a violation of this section. The section requires mental health professionals, PSD, and law enforcement agencies to do certain things. Mental health professionals are immune from criminal liability if they act in good faith when making a report, and the section also provides that making a false report is a misdemeanor.
- (H) On page 10, line 6, the bill provides for “verification” of the persons listed in the database by law enforcement agencies, mental health professionals, and sellers of firearms or other dangerous weapons. But it does not describe what verification means, as opposed to access. If there is a difference between verification and access, the term “verification” should be explained or defined to make sure that only those people who need to, and may legally, have access to all the information on an individual are allowed to see it.
- (I) We have strong legal concerns about giving firearms wholesalers or retailers any access to a database for mental health information. We are concerned about potential violations of the Hawaii constitution’s privacy protections, section 334-5, and HIPAA if some or all of this information is available to firearms sellers. Limiting the sellers’ access to information on individuals who have signed the appropriate waivers would avoid this problem.
- (J) As mentioned earlier in our testimony, an individual’s mental health records are protected from unauthorized use or disclosure by section 334-5, HRS. We recommend that section 334-5 be amended to allow the records maintained in the database to be disclosed to it, and to be used for these purposes, by mental health professionals, law enforcement agencies, and the agency that maintains the database.
- (K) PSD may not be the most appropriate agency to maintain the database since it does not maintain databases. We believe that the Department of the Attorney General may be better equipped for this purpose, given adequate resources. The Hawaii Criminal



Justice Data Center already maintains the statewide criminal history database (CJIS-Hawaii).

Thank you for giving us the opportunity to testify. We would be happy to assist in developing a plan to expand the current background check system to more effectively include private providers should the Committees wish to explore this option.

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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**KEITH KAMITA**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 932  
A BILL FOR AN ACT RELATING TO  
MENTAL HEALTH

Ted Sakai, Interim Director  
Department of Public Safety

Senate Committee on Health  
Senator John Green, Chair  
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair

Friday, February 8, 2013, 1:35 PM  
State Capitol, Room 229

Chairs Green and Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of Senate Bill 932 as it relates to requiring that the Department 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. This bill requires the Department to make a list of persons whose license for firearms or other dangerous or deadly weapons has been revoked.

Presently, the County Police authorize and maintain the firearms registration database. PSD does not control or have anything to do with the registration of individuals who purchase or possess firearms.

SENATE BILL 932

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Furthermore, the Department of Health and not PSD, manages and is responsible for individuals released from psychiatric facilities.

Thank you for the opportunity to testify.

Neil Okuna  
2750A Lowrey Ave.  
Honolulu, HI 96822  
[nnokuna@gmail.com](mailto:nnokuna@gmail.com)

Testimony for SB932.

Thank you for the opportunity to testify on this bill. I understand that I am submitting this somewhat late, but I do hope it reaches the committee prior to the hearing.

I am writing in support of this bill. The subject of gun control is currently a very controversial one and I realize that there are no easy solutions to the conundrum of assuring those that have the legal right to own and use firearms, while still protecting the public from those who would harm others or themselves. D.C. v. Heller is the law of the land and the Supreme Court has decided that all Americans have the right to own and use firearms. Scalia's opinion in Heller did allow, however, that firearm ownership was not an unfettered right, but one that could have reasonable restrictions placed upon that right.

Included in Scalia's opinion is the phrase "The Court has upheld gun control legislation including prohibitions on concealed weapons and possession of firearms by felons and the mentally ill, . . . " thereby providing a platform to stand on when considering restrictions on firearms possession by those who have overtly exhibited signs of an intent to hurt others or self.

It seems quite clear that if a person makes a statement that he or she intends to hurt or kill either another human being or themselves, and it can be determined that he or she is serious about the intent, that fact alone should give the State the right to remove the person's access to firearms. If a child goes to school and reports to the counselor that someone at home is sexually or physically abusing him or her, the counselor is required by state law to report this to the authorities and this could lead to the child being taken away from the household and placed in foster care. Similarly, the temporary removal of firearms access from someone who has threatened either homicide or suicide may be looked upon as a form of "foster care" of the person's firearms. If it can be reliably determined that this person is no longer a danger to others or self, then the weapons may be returned to the person's household. An assumption is made, however, that this person will also have access to services to prevent a recurrence of the incident.

The bill does allude to some major logistical challenges—including the need to establish a statewide database of firearms owners and persons who are currently denied the right to possess firearms, as well as a reporting structure that ensures activation of the process of temporary removal of legal access to firearms for any person who is determined to be a risk to self or others. As firearms technology has led to a profusion of weapons of high lethality, it is incumbent upon the state to start the process of establishing common sense regulations to reduce the likelihood of a person committing suicide or homicide due to a temporarily or permanently impaired mental state.

Thank you very much for your kind attention.

To: The Hawai'i State Senate Committees on Health and Public Safety  
Re: SB 932

To: The Honorable Senators Green and Espero and the members of their committees.

Aloha,

The Community Alliance for Mental Health, although appreciating the intent of this bill and fully supporting the goal of eliminating senseless death by firearms, opposes this measure.

It seems to us that this is a gut reaction to a series of horrible tragedies. The reaction in and of itself makes perfect sense. The old adage however of "look before you leap," comes into play here.

First and foremost we worry that this measure might actually stop some people from seeking help. We, the mental health consumers who are in treatment know the reporting rules. These rules have been in place for a very long time. When one begins treatment the doctors are required to explain them in great detail.

What we worry about are the people who are on the edge. Those people who have never sought mental health counseling before and are plagued by thoughts which might endanger themselves or others. If these troubled souls fear seeking counsel because they think that they might be turned in then they just might not get any counsel. Does this serve the people? We think not.

As to the proposed law itself we believe that the Hawai'i Disability Rights Center has raised all of the salient points and we agree with all of them.

The one item of this bill which troubles us most, as pointed out by the HDRC, is THE LIST. We, the consumers of Hawai'i, work in tandem with the government every day. Because of our illness we have to. History however shows that there is a reason every human being, no matter where they live or what language they speak, knows about Murphy's Law. The whole planet knows about it because it is TRUE. If something can go wrong it inevitably will go wrong.

When something goes wrong with THE LIST however people's lives will be ruined, some to the extent that it will result in death. The tragic reality of the stigma of mental illness is that although it is an illness no different than diabetes or multiple sclerosis it can be treated as a plague from Hell, hence, THE LIST.

Typhoid Mary was exiled, with her daughter, to an island in the middle of the Hudson River because she posed a clear and present danger to those around her. That was tragic but given the circumstances understandable.

Those suffering from mental illness however only might be a danger. Who amongst us has never in their lives uttered the words, "I could just kill (fill in the blank.)" You didn't mean it. You had no intention of harming your sibling, boss, or neighbor. You were just venting. Now a person who isn't sure how to deal with what they feel is going to shun counsel out of fear of being labeled. So you have untreated people with anger building up waiting to explode. The Community Alliance for Mental Health does not believe that SB 932 serves the interest of the state.

Mahalo,  
Robert Scott Wall  
Vice-President

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Community  
Alliance *for*  
Mental Health



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February 6, 2013

TO: Senate Health and Public Safety Committees  
Hearing February 8, 1:35, room 229

RE: SB932: Mental Health; Firearms; Dangerous or Deadly Weapons

Chair Green, Chair Espero, and members of the Committees:

We are writing on behalf of Mental Health America of Hawai'i, Hawai'i's oldest mental health advocacy organization. We, along with everyone else, think it's vitally important to keep guns out of the hands of dangerous people, and that includes those with mental illness. As a caveat, it should be noted that, according to the New York Times, 80% of multiple murders are committed by people who are deemed sane. But obviously it is important to prevent the 20% of those committed by people with have mental illness and are dangerous, and this is a timely moment to begin the discussion of how best to do this.

We request that the Legislature be cautious in proceeding with this bill.

We'd like to note at the outset that people exist along a continuum of mental health, with mental wellness at one end, and mental illness at the other. In fact, one in five of us experiences a diagnosable mental illness at some point in our lives. Moreover, mental wellness and mental illness are not static conditions. The severity of one's mental illness, and the strength of one's mental wellness, ebb and flow over time, and it's impossible to predict that course.

Several concerns as to how this bill would be implemented:

- SB932 says that mental health professional must report a person "who communicates a serious threat of physical violence against a reasonably identifiable victim or victims." We believe this needs to be more precisely described: exactly what constitutes a serious threat?

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- What will happen to the list of those reported by the mental health professionals and the psychiatric facility – who will use it? Could it become public? What if people want to know, Is there a dangerous mentally ill person in my neighborhood, even if they don't have guns? Will it be sent to the federal Bureau of Alcohol, Tobacco, and Firearms, which has requested such lists from the states? Will changes be made in a timely manner?
- A person committed involuntarily to a psychiatric facility, “who, in the opinion of a licensed psychologist who is primarily responsible for the patient’s treatment is a danger or self or others” shall not have guns upon release from the hospital UNLESS the psychologist says they are no longer a danger AND the person has a medical document saying they are no longer mentally ill.
  - Why a licensed psychologist? What about psychiatrist or APRN-Rx?
  - Who does the psychologist inform and in what format/by what means?
  - Why would the person be released from the hospital if they were still a danger to self or others? That doesn't make sense.
  - When people are discharged from the hospital, they do not have a document saying they are no longer mentally ill. In fact, they usually do still suffer from some degree of mental illness; they just are no longer so ill that they need 24-hour medical care in a locked facility, and, in fact, are well enough to live in the community.

Thank you for your consideration of our testimony.

Sincerely yours,

Marya Grambs  
Executive Director



Aloha to all,

I have an issue with two main parts of this bill. First, the definition of mental health professional "**Mental health professional" means a psychologist, psychiatrist, physician, social worker, or counselor.**" I do not believe social workers or counselors have the training, education, or experience to make such calls that can negatively alter someone's life. The second thing is the penalty issued, violation of this measure is a felony, yet to falsely report someone is only a misdemeanor. This bill puts too much power into the hands of less than qualified individuals, and weakly punishes those individuals for making false claims against you and possibly destroying your life in the process. Please do what is right for Hawaii and stop this bill from advancing further. Thank you for your time and service.

Respectfully,  
Jaysen M. Carico

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**Cc:** [Krud64@yahoo.com](mailto:Krud64@yahoo.com)  
**Subject:** \*Submitted testimony for SB932 on Feb 8, 2013 13:35PM\*  
**Date:** Thursday, February 07, 2013 4:25:58 PM

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Nakayama	Individual	Oppose	No

Comments:

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Antonie Wurster

Testimony Opposing SB932

This bill will discourage some people who own guns or who want to own guns from seeking help with any problems, particularly any thoughts of suicide or harm to others. It sweeps away the doctor – patient confidentiality without any study of the impacts of such a sudden change.

It also puts a great burden on the physician or psychologist who treats a troubled person. Quite a bit of judgment is involved in distinguishing a serious threat from a non-serious threat. This may open the doctor/psychologist up to a felony conviction.

Please do more homework into the impacts that this bill may have and confer with those to be impacted, namely, those who counsel troubled people and gun owners. This bill would benefit from study over the next year and substantive amendments in order for it to serve the public good.

Thank you for considering my testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [limbogimp03@aol.com](mailto:limbogimp03@aol.com)  
**Subject:** \*Submitted testimony for SB932 on Feb 8, 2013 13:35PM\*  
**Date:** Friday, February 08, 2013 3:24:54 PM

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Alexander Schwarzenberg	Individual	Oppose	No

Comments:

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**Date:** Thursday, February 07, 2013 5:17:25 PM

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Abelaye	Individual	Comments Only	No

Comments: I don't think that a social worker or a counselor is qualified to make a important decision if a person is mentally fit to own a firearm..

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Bruce F Braun	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Caltan Higa	Individual	Oppose	No

Comments: I oppose this bill. This bill, as written, is flawed. The definition of "Mental Health Professional" is too broad and open to abuse. Anybody with minimal training and qualifications can call themselves a "mental health Professional". Also false reporting by a "mental health Professional" is only a misdemeanor, even if charges are brought against the accuser. While the accused automatically loses their rights and must go through much greater hardship to clear ones name. The penalty for those who make intentional false accusations should be just as severe. We already have a mental health check. Anyone, who wishes to purchase a firearm here must get a permit from HPD which includes a medial evaluation. This is done by a certified physician. With includes private sales and gunshows.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Thorstad	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Kam	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
cyrus chun	Individual	Oppose	No

Comments: I oppose SB932. I strongly support efforts to improve mental health background checks for those in possession of or applying for permits for firearms. This bill, however, is so hurriedly introduced, so badly flawed, introduces issues of confidentiality, impacts on good mental health treatment, and bypasses protection of due process and 2nd Amendment rights, that it is unsupportable. There is already a system in place via the courts and HPD gun registration records.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
D Morohash	Individual	Oppose	No

Comments: There are unqualified personnel performing decisions .but this is a pretty good bill. .needs to be more accurate.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Moriguchi	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Darin Haituka	Individual	Oppose	No

Comments: Honorable Senators: I strongly object to this bill. There is far too much leeway for abuse by improperly trained or "under qualified" mental health professionals. The opinion of a "counselor" or "social worker" may greatly differ from a licensed "physician" or other more experienced mental health professional. Furthermore, there is very little recourse for a "disqualified person" who may have been mistakenly "misdiagnosed" by an improperly trained "health care professional". I strongly urge you to OPPOSE this piece of legislation. The rights of individuals are at stake and should not be ignored. At best this is a piece of "feel good" legislation that will do NOTHING to prevent disqualified individuals from obtaining firearms. I thank you for your time and attention.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
DARRYL MACHA	Individual	Oppose	No

Comments: Aloha Chairs and Committee Members, I am in OPPOSITION of this current measure, SB932. I believe that this bill is blatantly unconstitutional as it mandates no before-the-fact due process or corroboration. Please offer NO amendments and vote NO on this Bill. I am concerned citizen and registered voter. Thank you.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
David Robertson	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Dwayne Lim	Individual	Oppose	No

Comments:

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8 February, 2013

Eugene Pellecchia  
94-1075 Akaku St  
Mililani, Hi 96789

Subject: Testimony in OPPOSITION to SB 932

I oppose this bill due to the fact that the actions initiated by this law can be from a psychologist, psychiatrist, physician, social worker, or counselor. The qualifications of a "Social Worker" or "Counselor" are not standardized and certified with professional training. Allowing these unlicensed individuals to make these types of recommendations is unconscionable. If this bill were to go forward it should be at least *at the direction of a psychiatrist or psychologist*.

I also oppose the fact that Violation is an undetermined class of felony, yet false reporting by a 'Mental Health Professional', causing an adverse action to be taken is only a misdemeanor. The penalty for intentional mistakes needs to be as severe as the penalty put upon the intended target.

An agenda-driven MHP starts a process falsely and is essentially guilty of only a slap on the wrist--and that's at the end of a long, messy process. Meanwhile the aggrieved person will have a long and tortuous road to clear his or her name of being stamped with the scarlet red letter in 'the system' as a defective person. The big danger is that once you start showing up in 'the system' as a defective person, criminal, etc.--that takes on a life of its own. Everyone who looks at records in the system essentially relies on what others wrote. The penalty for intentional mistakes needs to be as severe as the penalty put upon the intended target.

I also oppose the fact that recourse is through agency policy level to return a misdiagnosed person's guns to them. At a minimum there should be provisions for a full-on court hearing in which the State has to later present its case in open court to make the findings of a 'Mental Health Professional' official. If not, this takes on the appearance of 'secret trial', in which an unelected person with unverifiable qualifications can make accusations and determinations without any chance of an aggrieved person to challenge them.

This bill must not go forward!

Sincerely,

Eugene Pellecchia

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Gary Smith	Individual	Oppose	No

Comments: Definition of 'Mental Health Professional': The actions initiated by this law can be from a psychologist, psychiatrist, physician, social worker, or counselor. This kind of bill skates on the edge of constitutionality on the best day, but does have a needed exigent circumstances function. My problem is with the stated draconian measures starting from a social worker or counselor. Penalties: Violation is an undetermined class of felony. Yet false reporting by a 'Mental Health Professional', causing an adverse action to be taken is only a misdemeanor! What the heck! An agenda-driven MHP starts a process falsely and is essentially guilty of only a slap on the wrist--and that's at the end of a long, messy process. Meanwhile the aggrieved person will have a long and tortuous road to clear his or her name. Recourse: The law is sparse on the recourse of a falsely accused person, or someone who is committed and then found to be misdiagnosed. If I read it correctly, the 'recourse' (i.e. 'the returning of someone's firearms to them') is kicked down to an agency policy level. That is VERY dangerous.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Benjamin	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Hessam Wessal	Individual	Oppose	No

Comments: I oppose this measure.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

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

Comments: I oppose SB932. Under this proposed legislation, Hawaiians would be subject to warrantless entry into their homes, warrantless seizure of their firearms and other weapons based solely on a mere "report" by a so-called "mental health professional." This bill is blatantly unconstitutional as it mandates no before-the-fact due process or corroboration. One of the most frightening aspects of SB 932 is its definition of a "mental health professional." The bill defines them as: "a psychologist, psychiatrist, physician, social worker, or counselor." This means that a family doctor, who has no specialized mental health training, could file a report to a law enforcement agency which would result in the confiscation of an individual's firearms. Furthermore, the "mental health professionals" who would be afforded the power to take away a constitution right, would be exempt from all civil or criminal liability, and only subject to a misdemeanor for false reporting. Also, I demand that you tell us what Hawaii is doing to comply with the NIAA. Mahalo, Jared

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Hirose	Individual	Oppose	No

Comments: I am opposed to this bill. Although the goal of keeping dangerous weapons out of the hands of the truly insane is a noble and worthwhile goal, the unintended consequences of this legislation will far outweigh any benefit. The proposed bill will serve as a negative incentive to those who most need mental health services. A person considering mass murder will be disinclined to discuss this with a mental health service provider, to the same degree and for the same reason that they would be loathe to discuss their impulses with a homicide detective. While the proposed legislation would be counterproductive in its intended purpose, the wide net it casts would assuredly catch numerous people who pose no risk to anyone. This bill would essentially make it a crime to tell your therapist, "Gosh, my boss is such a jerk. I just want to punch him sometimes!" I would wager that every single member of this committee has entertained such a notion at one time or another; revoking a citizen's human right to own firearms without a scrap of due process is outrageous. This bill puts the exercise of a Constitutionally protected human right at the mercy of anyone who can claim to be a mental health service provider, and further encourages over-reporting of every idle word which could be construed as threatening. Failure to report is punishable as a felony, while an outright lie aimed at revoking the rights of another person is a simple misdemeanor. This bill has a lofty goal, but falls far short. It will be counterproductive at stopping the next mass murderer, and will pose a significant threat to every gun owner in Hawaii. I urge you to vote against this bill.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
JOHN BAKER	Individual	Oppose	No

Comments: This bill is too vague and does not clearly describe its intent. Also putting the decision of mental capacity in the hands of a social worker or a counselor is ludicrous; they don't have the qualifications required like a real doctor, you run the risk of someone skewing the facts because of a biased view on guns. So what happens when a person is falsely labeled mentally unfit, are they made whole and have this removed from their record and given back their property or will they be faced with unreasonable outcomes for no apparent cause?

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kelly Lim	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ken	SGRC	Oppose	No

Comments:

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To whom it may concern,

I oppose SB932. Under this proposed legislation, Hawaiians would be subject to warrantless entry into their homes, warrantless seizure of their firearms and other weapons based solely on a mere “report” by a so-called “mental health professional.” This bill is blatantly unconstitutional as it mandates no before-the-fact due process or corroboration.

One of the most frightening aspects of SB 932 is its definition of a “mental health professional.” The bill defines them as: “a psychologist, psychiatrist, physician, social worker, or counselor.” This means that a family doctor, who has no specialized mental health training, could file a report to a law enforcement agency which would result in the confiscation of an individual’s firearms. Furthermore, the “mental health professionals” who would be afforded the power to take away a constitution right, would be exempt from all civil or criminal liability, and only subject to a misdemeanor for false reporting.

Also, I demand that you tell us what Hawaii is doing to comply with the NIAA.

Mahalo,  
Keola Esperas

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
kristopher macavoy	Individual	Oppose	No

Comments: While I do not believe that a person who has a documented mental health problem should be able to acquire or own a firearm, I am still opposed to this bill for several reasons. 1. The bill allows for just about anyone in the mental health community to be able to make a diagnosis on an individual's suitability to acquire and own firearms. I believe these decisions should be reserved only for licensed physicians in psychology or psychiatry that have obtained nothing less than a doctoral degree in their respective fields. Social workers and/or counselors may make recommendations that individuals in question be referred for psychological analysis, but they should not have the final authority to determine whether an individual's constitutional right may be granted or denied. 2. The penalties stated in the bill are ambiguous. The bill also seems to steer mental health professionals to make a biased decision about a person's true mental state. Physicians should instead be encouraged to make fair and accurate diagnoses with the understanding that their decision will affect the civil liberties of the patient. 3. The avenues for recourse afforded to those wrongly diagnosed is not consistent with the rule of law, particularly since it involves an individual civil liberty. It would only seem appropriate that such an important decision would be decided before a judge in a court of law, and not to a lower level of authority which could abuse the power and create an environment for potential extortion. I believe that, where a citizen's rights under the constitution are concerned, only the highest levels of authority should be making such important decisions.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Caires	Individual	Oppose	No

Comments: Aloha Chair and Senators, I write today in OPPOSITION of SB 932. By its terms, its definition of a "mental health professional." defines them as: "a psychologist, psychiatrist, physician, social worker, or counselor." Under this definition, any family doctor, who has no specialized mental health training, could file a report to a law enforcement agency which would result in the confiscation of an individual's firearms. Furthermore, the "mental health professionals" who would be afforded the power to take away a constitution right, would be exempt from all civil or criminal liability, and only subject to a misdemeanor for false reporting. Please oppose this legislation as drafted. Mahalo for you time and attention on this matter. With aloha, Matt Caires Kaneohe

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Stickel	Individual	Oppose	Yes

Comments: Thank you for your time for hearing my thoughts on this bill. This bill does not seem to have been sufficiently thought through. I have several issues with this bill. There is not enough due process in this bill. So much is resting on the word of one mental health professional. Restricting one's rights like this should at least be done by some form of board. This bill unfortunately allows regular physician to make these far reaching determinations not a mental health professional. In this bill, there is no mental health professional that a disturbed person could seek out to find help without the fear that their guns could be taken away. This would make it less likely that a person would seek help or treatment. The punishment for false or wrong reporting by a mental health professional is very unclear. Important parts of this bill for restricting access to new firearms are already covered at the Federal level by the NICS. This make it a doubling of effort and cost for the same results.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Peggy Geddis	Individual	Oppose	No

Comments: I strongly oppose SB932. Under this proposed legislation, Hawaiians would be subject to warrantless entry into their homes, warrantless seizure of their firearms and other weapons based solely on a mere "report" by a so-called "mental health professional." This bill is blatantly unconstitutional.

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Robert A. Seneres	Individual	Oppose	No

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
robert lillie	Individual	Oppose	No

Comments: While I do not believe that a person who has a documented mental health problem should be able to acquire or own a firearm, I am still opposed to this bill for several reasons. 1. The bill allows for just about anyone in the mental health community to be able to make a diagnosis on an individual's suitability to acquire and own firearms. I believe these decisions should be reserved only for licensed physicians in psychology or psychiatry that have obtained nothing less than a doctoral degree in their respective fields. Social workers and/or counselors may make recommendations that individuals in question be referred for psychological analysis, but they should not have the final authority to determine whether an individual's constitutional right may be granted or denied. 2. The penalties stated in the bill are ambiguous. The bill also seems to steer mental health professionals to make a biased decision about a person's true mental state. Physicians should instead be encouraged to make fair and accurate diagnoses with the understanding that their decision will affect the civil liberties of the patient. 3. The avenues for recourse afforded to those wrongly diagnosed is not consistent with the rule of law, particularly since it involves an individual civil liberty. It would only seem appropriate that such an important decision would be decided before a judge in a court of law, and not to a lower level of authority which could abuse the power and create an environment for potential extortion. I believe that, where a citizen's rights under the constitution are concerned, only the highest levels of authority should be making such important decisions.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rochelle Blaisdell	Individual	Comments Only	No

Comments: As a RN for over 20 years, most of which have been in emergency services, I have worked with numerous mental health professionals. One thing I disagree with is your definition of "mental health professionals." My experience in working your definition of these "mental health professionals is accountability. I believe that it should be a medical doctor only that can diagnosis and take accountability, not a social worker or psychologist! I do agree that social workers and psychologists should legally report any potentially harmful patient behaviors and diagnoses.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Livingston	Individual	Oppose	No

Comments: I beleive this bill is poorly worded and very broad, by being put together too quickly. I could support a bill on mental heath if it was more concise.

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SB932

Submitted on: 2/8/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Theodore Salmon	Individual	Oppose	No

Comments:

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I oppose SB932. Under this proposed legislation Hawaii Residents would be subject to warrantless seizure of their firearms and other weapons and warrantless entry into their homes based solely on a mere "report" by a so-called "mental health professional." This bill is blatantly unconstitutional as it mandates no before-the-fact due process or corroboration.

One of the most frightening aspects of SB 932 is its definition of a "mental health professional." The bill defines them as: "a psychologist, psychiatrist, physician, social worker, or counselor." This means that a family doctor, who has no specialized mental health training, could file a report to a law enforcement agency which would result in the confiscation of an individual's firearms. Furthermore, the "mental health professionals" who would be afforded the power to take away a constitutional right, would be exempt from all civil or criminal liability, and only subject to a misdemeanor for false reporting.

Also, I demand that you tell us what Hawaii is doing to comply with the NIAA.

Thank You,  
Thomas Palpallatoc

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SB932

Submitted on: 2/7/2013

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

Comments:

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SB932

Submitted on: 2/7/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Virginia MacAvoy	Individual	Oppose	No

Comments: While I do not believe that a person who has a documented mental health problem should be able to acquire or own a firearm, I am still opposed to this bill for several reasons. 1. The bill allows for just about anyone in the mental health community to be able to make a diagnosis on an individual's suitability to acquire and own firearms. I believe these decisions should be reserved only for licensed physicians in psychology or psychiatry that have obtained nothing less than a doctoral degree in their respective fields. Social workers and/or counselors may make recommendations that individuals in question be referred for psychological analysis, but they should not have the final authority to determine whether an individual's constitutional right may be granted or denied. 2. The penalties stated in the bill are ambiguous. The bill also seems to steer mental health professionals to make a biased decision about a person's true mental state. Physicians should instead be encouraged to make fair and accurate diagnoses with the understanding that their decision will affect the civil liberties of the patient. 3. The avenues for recourse afforded to those wrongly diagnosed is not consistent with the rule of law, particularly since it involves an individual civil liberty. It would only seem appropriate that such an important decision would be decided before a judge in a court of law, and not to a lower level of authority which could abuse the power and create an environment for potential extortion. I believe that, where a citizen's rights under the constitution are concerned, only the highest levels of authority should be making such important decisions.

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SB932

Submitted on: 2/8/2013

Testimony for HTH/PSM on Feb 8, 2013 13:35PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
William Quinn	Individual	Oppose	No

Comments: This bill is unconstitutional.

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