

JAN 16 2014

A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The legislature finds that prior to a person
2 purchasing a firearm in Hawaii, a national instant criminal
3 background check system (NICS) check is completed by the police
4 department in the county in which the firearm is being purchased
5 to determine whether the person is federally prohibited from
6 possessing a firearm. NICS is a federal database to which
7 states are asked to contribute data, in order to identify those
8 who are federally prohibited from possessing a firearm. Recent
9 events have resulted in some states being criticized for failing
10 to provide sufficient information to NICS. This Act addresses
11 our State's noncompliance with NICS information requirements
12 with respect to individuals with mental illness.

13 The legislature further finds that under the NICS
14 Improvement Amendments Act of 2007, P.L. 110-180, title 18
15 U.S.C. section 922(d)(4) and (g)(4), "persons who have been
16 adjudicated as mental defectives or have been committed to a
17 mental institution" are prohibited from possessing firearms or
18 ammunition. That prohibition is extended to Hawaii law pursuant



1 to section 134-7(a), Hawaii Revised Statutes, which provides:
2 "No person who . . . is a person prohibited from possessing
3 firearms or ammunition under federal law shall own, possess, or
4 control any firearm or ammunition therefor."

5 However, Hawaii does not submit involuntary civil
6 commitment information to NICS. Persons who have been
7 involuntarily civilly committed have been found by a court to be
8 mentally ill and an imminent danger to themselves or others.
9 Pursuant to our State's confidentiality law on mental health
10 information and records, the State cannot submit civil
11 commitment information to NICS, nor share it with law
12 enforcement agencies responsible for granting firearm permits
13 and registering firearms.

14 This Act also addresses a provision of the NICS Improvement
15 Amendments Act of 2007 to implement a "relief from disabilities
16 program." It creates a relief program that would allow someone
17 who is prohibited under federal law from possessing a firearm,
18 because the person was adjudicated as a "mental defective" or
19 involuntarily committed to a psychiatric institution, to obtain
20 relief from that federal prohibition once the person's mental
21 health issues have been addressed and the person is no longer a
22 danger to the public. The person could petition the court and



1 obtain relief by proving to the court that the person will not
2 be likely to act in a manner dangerous to public safety and that
3 the granting of relief would not be contrary to the public
4 interest.

5 With the implementation of a relief program, Hawaii would
6 be eligible for federal funding. There are now twenty-three
7 states with relief programs that have qualified for over
8 \$50,000,000 in federal fiscal years 2009, 2010, 2011, and 2012
9 to assist them in ensuring that appropriate information is being
10 properly reported to NICS.

11 The purpose of this Act is to require the courts to forward
12 information about involuntary civil commitment orders to the
13 Hawaii criminal justice data center, which in turn will forward
14 the information to the Federal Bureau of Investigation for
15 inclusion in the NICS database. It will also require the Hawaii
16 criminal justice data center to maintain the information for
17 disclosure to law enforcement for the purpose of firearms
18 permitting and registration.

19 SECTION 2. Chapter 134, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:



1 "§134- Relief from federal mental health prohibitor.

2 (a) Any person who is prohibited from shipping, transporting,
3 possessing, or receiving any firearm or ammunition, pursuant to
4 title 18 United States Code section 922(d)(4) or (g)(4), having
5 been adjudicated as a mental defective or having been committed
6 to a mental institution under the laws of this State, may
7 petition the circuit court in the circuit where the adjudication
8 or commitment was made, in a civil proceeding, for relief from
9 the federal mental health prohibitor based on the adjudication
10 or commitment. The attorney general shall represent the State;
11 provided that the attorney general, with the prosecuting
12 agency's consent, may designate the prosecuting attorney for the
13 county in which the petitioner seeks relief to represent the
14 State.

15 (b) In the civil proceeding, the court shall consider:

16 (1) The circumstances regarding the adjudication or
17 commitment from which relief is sought, including but
18 not limited to the court files of the adjudication or
19 commitment;

20 (2) The petitioner's mental health and criminal history
21 records, if any;



1 (3) The petitioner's reputation in the community,
2 developed at a minimum through character witness
3 statements, testimony, or other character evidence;
4 and

5 (4) Changes in the petitioner's condition or circumstances
6 since the disqualifying events relevant to the relief
7 sought, including medical documentation that the
8 petitioner is no longer adversely affected by the
9 condition that resulted in the petitioner's
10 adjudication or commitment and not likely to act in a
11 manner dangerous to public safety.

12 (c) The court shall grant the petition for relief if the
13 petitioner proves, by clear and convincing evidence, that the
14 petitioner will not be likely to act in a manner dangerous to
15 public safety and that the granting of the relief would not be
16 contrary to the public interest. The court shall make written
17 findings of facts and conclusions of law on the issues before it
18 and issue a final order.

19 (d) When a court issues an order granting or denying a
20 petition for relief, the court shall forward this information to
21 the Hawaii criminal justice data center, which in turn shall
22 forward this information to the Federal Bureau of Investigation,



1 or its successor agency, for inclusion in the national instant
2 criminal background check system database. The information
3 shall also be maintained by the Hawaii criminal justice data
4 center for disclosure to and use by law enforcement officials
5 for the purpose of firearms permitting or registration pursuant
6 to chapter 134.

7 (e) A person may file a petition for relief under this
8 section no sooner than two years after the adjudication or
9 commitment from which the relief is sought, and no more
10 frequently than once every three years thereafter.

11 (f) For purposes of this section, the terms "adjudicated
12 as a mental defective", "committed to a mental institution", and
13 "mental institution" shall be construed in accordance with title
14 18 United States Code section 922, title 27 Code of Federal
15 Regulations section 478.11, and judicial interpretations of
16 those provisions.

17 (g) Any relief granted pursuant to this section shall not
18 constitute relief from any other federal prohibitors or from any
19 state prohibition pursuant to chapter 134. The State, its
20 officers, and its employees shall not be liable for any damages,
21 attorneys' fees, or costs related to this relief process.



1 (h) The petitioner may appeal a denial of relief, and the
2 standard of review on appeal shall be de novo."

3 SECTION 3. Section 334-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§334-5 Confidentiality of records.** All certificates,
6 applications, records, and reports made for the purposes of this
7 chapter and directly or indirectly identifying a person subject
8 hereto shall be kept confidential and shall not be disclosed by
9 any person except so far as:

10 (1) The person identified, or the person's legal guardian,
11 consents;

12 (2) Disclosure may be deemed necessary by the director of
13 health or by the administrator of a private
14 psychiatric or special treatment facility to carry out
15 this chapter;

16 (3) A court may direct upon its determination that
17 disclosure is necessary for the conduct of proceedings
18 before it and that failure to make the disclosure
19 would be contrary to the public interest;

20 (4) Disclosure may be deemed necessary under the federal
21 Protection and Advocacy for Mentally Ill Individuals
22 Act of 1986, Public Law 99-319, to protect and



- 1 advocate the rights of persons with mental illness who
2 reside in facilities providing treatment or care;
- 3 (5) Disclosure of a person's treatment summary from a
4 previous five-year period from one health care
5 provider to another may be deemed necessary for the
6 purpose of continued care and treatment of the person,
7 or for health care operations; provided that the
8 health care provider seeking disclosure makes
9 reasonable efforts to obtain advance consent from the
10 person; [~~or~~]
- 11 (6) Disclosures are made between the person's health care
12 provider and payor to obtain reimbursement for
13 services rendered to the person; provided that
14 disclosure shall be made only if the provider informs
15 the person that a reimbursement claim will be made to
16 the person's payor, the person is afforded an
17 opportunity to pay the reimbursement directly, and the
18 person does not pay[~~-~~]; or
- 19 (7) Disclosures made by the court, or the Hawaii criminal
20 justice data center, of involuntary civil commitments
21 issued pursuant to section 334-60.5 are for the



1 purpose of firearms permitting or registration
2 pursuant to chapter 134.

3 Nothing in this section shall preclude the application of more
4 restrictive rules of confidentiality set forth for records
5 covered by Title 42, Part 2, Code of Federal Regulations,
6 relating to the confidentiality of alcohol and drug abuse
7 patient records. For the purposes of this section, "facilities"
8 shall include but not be limited to hospitals, nursing homes,
9 community facilities for mentally ill individuals, boarding
10 homes, and care homes.

11 Nothing in this section shall preclude disclosure, upon
12 proper inquiry, of any information relating to a particular
13 patient and not clearly adverse to the interests of the patient,
14 to the patient, the patient's family, legal guardian, or
15 relatives, nor, except as provided above, affect the application
16 of any other rule or statute of confidentiality. The use of the
17 information disclosed shall be limited to the purpose for which
18 the information was furnished."

19 SECTION 4. Section 334-60.5, Hawaii Revised Statutes, is
20 amended by amending subsection (j) to read as follows:

21 "(j) If the court finds that the criteria for involuntary
22 hospitalization under section 334-60.2(1) has been met beyond a



1 reasonable doubt and that the criteria under sections
2 334-60.2(2) and 334-60.2(3) have been met by clear and
3 convincing evidence, the court may issue an order to any law
4 enforcement officer to deliver the subject to a facility that
5 has agreed to admit the subject as an involuntary patient, or if
6 the subject is already a patient in a psychiatric facility,
7 authorize the facility to retain the patient for treatment for a
8 period of ninety days unless sooner discharged. The court may
9 also authorize the involuntary administration of medication,
10 where the subject has an existing order for assisted community
11 treatment, issued pursuant to part VIII of this chapter,
12 relating to assisted community treatment, and in accordance with
13 the treatment prescribed by that prior order. An order of
14 commitment shall specify which of those persons served with
15 notice pursuant to section 334-60.4, together with such other
16 persons as the court may designate, shall be entitled to receive
17 any subsequent notice of intent to discharge, transfer, or
18 recommit. The court shall forward to the Hawaii criminal
19 justice data center all orders of involuntary civil commitment
20 or information from all orders of involuntary civil commitment,
21 as requested by the Hawaii criminal justice data center, which
22 in turn shall forward the information to the Federal Bureau of



1 Investigation, or its successor agency, for inclusion in the
2 national instant criminal background check system database. The
3 information shall also be maintained by the Hawaii criminal
4 justice data center for disclosure to and use by law enforcement
5 officials for the purpose of firearms permitting or registration
6 pursuant to chapter 134. This subsection shall apply to all
7 involuntary civil commitments without regard to the date of the
8 involuntary civil commitment."

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2014.

12

INTRODUCED BY:





S.B. NO. 2247

Report Title:

Mental Health; Gun Control

Description:

Provides for a court-based relief program for persons federally prohibited from owning a firearm based on a finding of mental illness. Requires the courts to provide information relating to involuntary civil commitments to the Hawaii criminal justice data center to disclose to the national instant criminal background check system database and to law enforcement for gun control purposes.

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

