

**HB2246**

**HD1**



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2246, H.D. 1, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

**DATE:** Tuesday, April 1, 2014

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY. For information, call  
Debbie L. Tanakaya, Deputy Attorney General, at 586-1100

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Chairs Hee and Ige and Members of the Committees:

The Department of the Attorney General strongly supports this bill related to firearm safety and our State's compliance with mental health related provisions of the National Instant Criminal Background Check System (NICS).

The purpose of this bill is two-fold: (1) to allow for the information from adjudicated involuntary civil commitment orders to be reported to the National Instant Criminal Background Check System (NICS); and (2) to provide a process for judicial relief for a person, federally prohibited from owning a firearm based on a finding of mental illness, who has recovered and is no longer a danger to the public. A true win-win situation for all. The State is currently unable to provide required information to NICS on adjudicated civil commitments, because state law prohibits the disclosure of this information. In addition, by enacting the judicial relief program, Hawaii will join those states that currently offer relief from the federal prohibition, and would be eligible to apply for federal grant moneys that totaled over \$50,000,000 nationwide in the past four fiscal years.

NICS is a federal database to which states are asked to contribute data, in order to identify those who are federally prohibited from possessing a firearm. If someone wants to purchase a firearm, anywhere in the United States, an instant NICS check can be done to determine whether the person is federally prohibited from possessing a firearm.

As people across the nation have looked to NICS as a way to keep guns out of the hands of dangerous mentally ill patients, some states, including Hawaii, have been criticized for failing to provide sufficient information to NICS. And although "persons who have been adjudicated as mental defectives or have been committed to a mental institution" are prohibited from possessing

firearms or ammunition, Hawaii does not submit civil commitment information to NICS. See 18 U.S.C. § 922(d)(4) and (g)(4), and section 134-7(a), Hawaii Revised Statutes (HRS).

Pursuant to our State's confidentiality law on mental health information and records, the State cannot submit civil commitment information to NICS, nor share it with law enforcement agencies responsible for granting firearm permits and registering firearms. This bill would amend sections 334-5 and 334-60.5, HRS, to require the courts to forward information about involuntary civil commitment orders to the Hawaii Criminal Justice Data Center, which in turn will forward the information to be included in the NICS database. It will also require the Hawaii Criminal Justice Data Center to maintain the information for disclosure to law enforcement for the purpose of firearms permitting and registration.

It is important to note that, unless this mental health information is provided to NICS, existing federal funding that the State currently receives could be in jeopardy because of a penalty provision for failure to comply with reporting requirements.

This bill also addresses a provision of the NICS Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA), that encourages states to enact a "relief from disabilities program." This program allows someone, who is prohibited under federal law from possessing a firearm because the person was adjudicated a "mental defective" or because the person was involuntarily committed to a psychiatric institution, to obtain relief from that "federal prohibitor" once the person's mental health issues have been addressed and the person is no longer a danger to the public. This would involve a court hearing to determine whether the person is likely to act in a manner dangerous to the public safety, and whether the grant of the relief will be in the public interest. The NIAA provides an incentive to states to pass laws providing for the relief programs. A state that enacts such a program is eligible for a federal grant to establish and upgrade information automation and identification technologies for the submission of records to NICS. Hawaii currently does not have such a relief program and is therefore not eligible for the funding.

The Department supports the "by clear and convincing evidence" standard of proof because state law currently requires such a standard of proof when involuntarily hospitalizing a person pursuant to Hawaii's civil commitment statute. Under section 334-60.5, HRS, a person can only be civilly committed when it is determined, "beyond a reasonable doubt," that the

person is mentally ill (or abusing substances) and "by clear and convincing evidence" the person is imminently dangerous to self or others. Having had a court determine that an individual is so dangerous that he/she should lose his/her freedom, it is reasonable to place the same standard upon the person to prove that he/she no longer suffers from the condition that caused him/her to be so dangerous that he/she had to be civilly committed.

We strongly urge you to pass this bill as written. Thank you for the opportunity to testify.



# Hawaii Rifle Association

State Affiliate of the National Rifle Association  
Founded in 1857

March 28, 2014

Testimony on HB 2246, HD1  
Before JDL/WAM, Tuesday April 1, 2014, 10:00am, Rm211

## **IN SUPPORT** with an **AMENDMENT**

Hon. Chairs, Vice Chairs, and Members,

HRA supports this bill.

We suggest an amendment:

In Section 2. (c), replace "...by clear and convincing evidence..." with "...by a preponderance of the evidence...."

High proof standards are appropriate where the state is going to deprive an individual of liberty (criminal cases and civil commitments), but in the case of a restoration, an individual is proving that their civil rights should be restored.

This bill brings Hawaii into compliance with the federal act, the NICS Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA)

<http://www.uscis.gov/iframe/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-38245.html> which contains only the language "will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest...." The higher standard of proof, "...clear and convincing" is not used in the parent federal statute and not necessary for compliance to bring federal incentive money to Hawaii.

HRA respectfully asks that the Committees amend this bill thus and pass it.

Thank you for the opportunity to testify on behalf of HRA

Dr. Maxwell Cooper,  
HRA Legislative Liaison  
[macooper.1941@gmail.com](mailto:macooper.1941@gmail.com), 225-6944

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
steven a kumasaka	Individual	Support	No

Comments: support this bill only with amendments proposed by HRA

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Isaacson	Individual	Comments Only	No

Comments: This bill will only be workable with the amendment proposed by the HRA. As written "clear and convincing" is impossibly strict.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
George Pace	Individual	Support	No

Comments: Support as amended by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tom Markson	Individual	Comments Only	No

Comments: Please adopt HRA's amendment to this bill

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Niel Kaneshiro	Individual	Support	No

Comments: I support the bill with the amendment proposed by HRA. This will contribute to the public good while at the same time - keeping firearms out of the hands of those who are ineligible. The vast majority of mass shootings are perpetrated by those with serious mental health problems.

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**HB2246**

Submitted on: 3/28/2014

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dan Clegg	Individual	Comments Only	No

Comments: Please support the bill with the amendment proposed by HRA

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrik	Individual	Support	No

Comments: I support this bill with the amendment proposed by the HRA. Thank You

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrew LeBold	Individual	Comments Only	No

Comments: I support this bill with the amendment proposed by the HRA.

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**HB2246**

Submitted on: 3/28/2014

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
GENER MACARAEG	Individual	Comments Only	No

Comments: I support this bill with the amendment proposed by HRA. Thank you.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brandon Leong	Individual	Support	No

Comments: I support the bill with the amendment proposed by HRA. If ammendment is not added then I will no longer support this bill.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harry Graham	Individual	Support	No

Comments: I support the bill with the amendment proposed by the HRA. Mahalo.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
CLINT H OSBORN	Individual	Comments Only	No

Comments: I support the bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Elizabeth Kellam	Individual	Support	No

Comments: I support the bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tom Galli	Individual	Support	No

Comments: I support this bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Terry Moore	Individual	Comments Only	No

Comments: I support the bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Shampoe	Individual	Support	No

Comments: Support the bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrew Baker	Individual	Comments Only	No

Comments: I support the bill with the amendment proposed by the Hawaii Rifle association.

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**HB2246**

Submitted on: 3/28/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Siegfried T Runge	Individual	Comments Only	No

Comments: I support the bill with the amendment proposed by HRA.

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**HB2246**

Submitted on: 3/29/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Frank J Mulec	Individual	Support	No

Comments: support the bill with the amendment proposed by HRA

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**HB2246**

Submitted on: 3/29/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
T. Merrill	Individual	Support	No

Comments: Please pass this bill with the amendments suggested by the Hawaii Rifle Association. Reference Page 5, lines 8 and 9. 'Preponderance Of Evidence' is more in line with someone trying to restore their rights after the government has put a 'scarlet letter' on their reputation. The standard of 'Clear and convincing evidence' in which to clear one's name is too Orwellian, and almost guarantees that a wrongly diagnosed/accused person will never win against the State.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Subject:** Submitted testimony for HB2246 on Apr 1, 2014 10:00AM  
**Date:** Monday, March 31, 2014 8:20:15 AM

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**HB2246**

Submitted on: 3/31/2014

Testimony for JDL/WAM on Apr 1, 2014 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Derek Goto	Individual	Comments Only	No

Comments: I support the bill with the amendment proposed by HRA

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