

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

**Senate Committees on Health and Public Safety, Intergovernmental
and Military Affairs**

HB2246, HD1, Relating to Mental Health

**Testimony of Linda Rosen, M.D., M.P.H.
Director of Health**

Monday, March 17, 2014, 2:30 p.m., Room 229

1 **Department's Position:** The Department of Health (DOH) supports this bill.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** The purpose of the bill is to (1) allow for the information from adjudicated
4 involuntary civil commitment orders to be reported to the National Instant Criminal Background Check
5 System (NICS) and (2) provide a process for court-based relief for a person, federally prohibited from
6 owning a firearm, based on a finding of mental illness, who has recovered and who is no longer a danger
7 to the public.

8 The NICS is a federal database which uses information provided by states to identify individuals
9 who are federally prohibited from possessing a firearm. Specifically regarding, "persons who have been
10 adjudicated as mental defectives or have been committed to a mental institution," Hawaii does not
11 provide information on adjudicated civil commitment as the state law prohibits the disclosure of this
12 information. Pursuant to state confidentiality laws on mental health information and records, Hawaii
13 cannot submit information on civil commitment to the NICS and cannot share information with law
14 enforcement agencies responsible for approving requests for firearm permits and registrations.

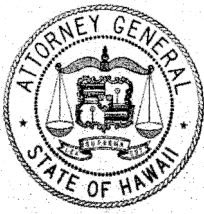
1 This bill will revise chapters 334-5 and 334-60.5, Hawaii Revised Statutes (HRS), to require the
2 courts to forward information about involuntary civil commitment orders to the Hawaii Criminal Justice
3 Data Center. In turn, the Hawaii Criminal Justice Data Center will forward the information to the
4 Federal Bureau of Investigation's NICS database. Information will be maintained by the Hawaii
5 Criminal Justice Data Center for disclosure to law enforcement for verification prior to approving
6 requests for firearm permits and registrations.

7 Additionally, Hawaii's enactment of the court-based relief program would make the state eligible
8 to apply for federal grant moneys under the provision of the NICS Improvement Amendments Act of
9 2007. This act encourages states to enact a "relief from disabilities program." Under this program, an
10 individual prohibited by federal law from possessing a firearm due to being adjudicated as mentally
11 defective or being committed to a mental institution could seek a court hearing to determine whether
12 they are likely to act in a manner dangerous to the public safety and to determine whether the granting of
13 relief will be in the public interest.

14 Federal grant monies for similar court-based relief programs have totaled over \$50,000,000
15 nationwide over the past four fiscal years. Hawaii would become eligible for federal funding with the
16 implementation of its own court-based relief program.

17 The DOH supports this bill and looks forward to working with the Department of the Attorney
18 General and other stakeholders regarding the establishment of a court-based relief program and the
19 release of involuntary civil commitment orders by the court.

20 Thank you for the opportunity to provide testimony on this bill.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

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

DATE: Monday, March 17, 2014 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
Debbie L. Tanakaya, Deputy Attorney General

Chairs Green and Espero 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.