



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

ON THE FOLLOWING MEASURE:
H.B. NO. 2246, RELATING TO MENTAL HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 31, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads and Members of the Committee:

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.

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

January 30, 2014

Testimony on HB 2246
Before JUD, Friday, January 31, 2014, 2pm

IN SUPPORT with suggested **AMENDMENTS**

Hon. Chair, Vice Chair, and Members,

HRA supports this bill.

We suggest 2 amendments:

Section 2. (c), replace "...by clear and convincing evidence..." with "...by a preponderance of the evidence..." This language would be compatible with that in Section 1, "...will not be likely to act in a manner dangerous to public safety..."

Payors offering coverage for psychiatric or psychological care in Hawaii shall provide as a covered service the evaluation required of the petitioner to document "that the petitioner is no longer adversely affected by the condition ...and not likely to act in a manner dangerous to public safety." [Section 2., (b) (4)]

Thank you for the opportunity to testify on behalf of HRA

Dr. Maxwell Cooper,
HRA Legislative Liaison
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LATE TESTIMONY

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STATE & LOCAL AFFAIRS DIVISION
DANIEL REID, HAWAII STATE LIAISON

January 30, 2014

The Honorable Karl Rhoads
Chair, House Judiciary Committee
Sent Via Email

Re: House Bill 2246 – SUPPORT

Dear Representative Rhoads:

On behalf of the Hawaii members of the National Rifle Association, I support House Bill 2246. This important legislation will ensure proper reporting of prohibited persons to NICS as well as provide an avenue for restoration of rights.

I recommend the committee consider amending the bill to remove the initial two year prohibition on filing a petition for relief in addition to changing the standard for relief imposed on a petitioner from "clear and convincing evidence" to a "preponderance of the evidence". While this high standard is appropriate for the State to prove when taking away a right from a citizen, it is inappropriate to hold a citizen to this standard when seeking to restore a right. Proving a disability does not exist by "clear and convincing evidence" is an almost insurmountable task.

Thank you for your attention and I ask that you support this bill.

Cordially,

Daniel S. Reid
State Liaison

Cc: Members, House Judiciary Committee