

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Public Safety,
Veterans, & Military Affairs and House Committee on Judiciary**

February 5, 2020

H.B. No. 2232: RELATING TO FIREARMS

Hearing: February 6, 2020, 2:15 p.m.

Chairs Takayama and Lee, Vice Chairs Asuega Gates and San Buenaventura, and Members of the Committees:

The Office of the Public Defender respectfully opposes H.B. No. 2232.

HRS Section 134-7(e) currently covers restrictions on minor and prohibits possession of firearms for minors in specific circumstances. Our concerns are outlined as follows:

1. Section 134-7(g)(1): The inclusion of persons who “as a minor” was “diagnosed as having a significant behavioral, emotional, or mental disorder”;
2. Section 134-7(g)(2): The inclusion of persons who “are less than twenty-five years old” and been adjudicated “to have committed not more than one crime of violence”; and
3. Section 134-7(g)(3): The inclusion of person who “are less than twenty-five years old” and been adjudicated “to have committed one or more crimes of violence”

We are deeply concerned about the need to keep juvenile records sealed and protected and the broad language of this proposed measure. Of particular concern is the very broad language in subsection (g)(1) which may include such common emotional “disorders” as depression -- a common and treatable disorder. Under subsection (g)(1), any person who needed treatment for depression after the death of a family member or because their family was experiencing extreme economic stress after the loss of a parent’s job or occupation, or any number of common reasons, would have their records made available to law enforcement. Minors in need of mental health treatment are also in need of protection from the misuse and abuse of any mental health records both during their minority and into adulthood. We strongly object to the language in this measure that states, “Any agency within the State shall make its records relating to behavioral, emotional, mental disorders diagnoses or family court adjudications, or both, available to law enforcements officials.” [Page 6-7, lines 18-20 and 1-2]. Privacy, and especially privacy of mental health records, should be handled with special care for adults. This is even more important when it pertains to the mental health records of children -- children who may be victims of trauma, children who may be victims of abuse, and children who may be experiencing behavioral issues

because of life circumstances like homelessness. The broad language of this bill and disregard for the special privacy needs of children is very troubling.

We acknowledge the desire to seek restrictions on access to firearms; however, these restrictions should not come at the cost of providing mental health and behavioral health records to law enforcement under the broad swath of this measure.

Additionally, we are concerned about the term “crime of violence” as used in this measure. A minor, who at the age of 12, may commit one single act of violence, would forever be prohibited from possessing a firearm. This language is far too broad and fails to take into consideration that children are still learning, developing, and maturing. A 12-year-old who may commit one single impulsive act of violence, such as fighting with another student (and being adjudicated for an assault in the third degree, a misdemeanor) should be allowed to learn, develop and attain the maturity for gun ownership and should not be prohibited from seeking employment opportunities in the military or in law enforcement because of a single poor decision made in the heat of the moment when a teenager. Many minors in the juvenile justice system who have been adjudicated for crimes of violence have gone on to seek successful careers in the military.

We strongly oppose this measure as being too broad.

Thank you for the opportunity to comment on H.B. No. 2232.

HB-2232

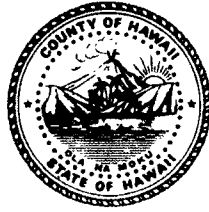
Submitted on: 2/5/2020 11:22:12 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------------------|---------------------------|---------------------------|
| brooks | Hawaii Rifle Association Member | Oppose | No |

Comments:

Harry Kim
Mayor



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 4, 2020

Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair
Committee on Public Safety, Veterans, & Military Affairs

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
Hawai'i State Legislature

Dear Chairs Takayama and Lee, Vice-Chairs Gates and San Buenaventura, and Committee members:

RE: HB 2710 Relating to Protective Orders
HB 2232 Relating to Firearms
HB 2709 Relating to the Uniform Probate Code
HB 1600 Relating to Firearms
HB 1902 Relating to Firearms

The First Amendment to the Constitution of the United States provides for freedom of religion, speech, and press; and the right to peaceably assemble and to petition the government. Yet, as fundamental and sacrosanct as those values are to America, few if any would argue that those freedoms are not subject to reasonable restrictions (take the cliché of “yelling ‘Fire’ in a crowded theater”).

Similarly, the Second Amendment guarantees the right to keep and bear arms. This right, too, must be subject to reasonable restrictions, or else we would each be able to have our own machine gun mounted on our mantelpiece or strapped over our shoulders.

So the question comes down to what is reasonable. That should be determined by a free people acting through their elected representatives, in this case our State Legislature. And given the times in which we live, and the carnage that we have witnessed both in our own state and across the country, I thank you for taking on the divisive but crucial task of deciding what reasonable restrictions might be.

You have five bills on this agenda that impact the right to keep and bear arms:

HB 2710 Relating to Protective Orders
HB 2232 Relating to Firearms
HB 2709 Relating to the Uniform Probate Code
HB 1600 Relating to Firearms
HB 1902 Relating to Firearms

February 4, 2020

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HB 2710 allows for a search and seizure of a firearm if an officer believes certain actions are “imminent.” I defer to criminal law experts as to whether that is the appropriate standard, but if it is, it seems that any weapon should be seized, not just a firearm. This bill could be less gun legislation and more generally protective of victim rights but in either case is a positive step forward.

HB 2232 is an admirable effort to come closer to the goal that both sides of the gun issue agree on—keeping weapons out of the hands of people who shouldn’t have them, Whether problems were manifest during childhood or adulthood should not matter.

HB 2709 would close a loophole in ownership laws by requiring that all firearms in an estate are properly transferred or disposed of before the estate may close.

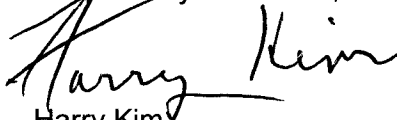
HB 1600 also closes a loophole, with respect to the loaning of a firearm to a person who has not had a background check. This particular bill would seem to impact situations in which a loan would be reasonable, such as taking a visiting friend hunting, so I wonder whether exceptions could be made to allow the loaning of a firearm while the owner is present, or for a visitor to undergo a background check in their home jurisdiction; or in Hawaii, remotely, in advance of their visit. Don’t know whether this last idea is practical.

HB 1902 would prohibit large capacity magazines for all firearms. They are already restricted for pistols, and HB 1902 might be the most important bill before you today, given the data on mass shootings that is set forth in the preamble of this bill.

Can any of the restrictions contained in the five bills be considered unreasonable? I have no doubt that some will say yes, but except for the accommodation asked for in my comments on HB 1600, I would argue that all of these bills would make Hawaii a safer place without unduly restricting the right to keep and bear arms.

Again, thank you for taking on these issues.

Respectfully Submitted,


Harry Kim
MAYOR

HB-2232

Submitted on: 2/5/2020 12:02:23 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------|---------------------------|---------------------------|
| Caitlin O'Shei | National Rifle Association | Oppose | Yes |

Comments:

HB-2232

Submitted on: 2/5/2020 8:07:38 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|----------------------------|---------------------------------------|---------------------------|---------------------------|
| Brandon Allen Kainoa Leong | Hawaii Rifle Association Board Member | Oppose | No |

Comments:

I oppose HB2232

Brandon Leong

Hawaii Rifle Association Board Member

Lessons In Firearms Education Board Member

Certified NRA Firearms Instructor

HB-2232

Submitted on: 2/4/2020 11:50:49 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Karin Nomura | Individual | Support | No |

Comments:

HB-2232

Submitted on: 2/4/2020 12:39:57 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lyle Hlromoto | Individual | Oppose | No |

Comments:

HB-2232

Submitted on: 2/4/2020 12:54:35 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Marcus Tanaka | Individual | Oppose | Yes |

Comments:

So a minors criminal history is blocked unless an unsealing is issued by a judge. So this bill would remove that protection and violating the minors rights to have a sealed document. But only because a firearm is in the picture, can exceptions be made and rights disappear.

This bill would cause parents to not submit their child to any treatments because when they turn 21, they may have their 2nd amendment right taken away.

HB-2232

Submitted on: 2/4/2020 3:25:01 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| MORGAN CUIZON | Individual | Oppose | No |

Comments:

HB-2232

Submitted on: 2/4/2020 3:54:33 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Vern Hiromoto | Individual | Oppose | No |

Comments:

HB-2232

Submitted on: 2/4/2020 4:41:12 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Brendon Heal | Individual | Oppose | No |

Comments:

Why are these minors files sealed in the first place? If they are a danger, why isn't that clear? Why are they still on the street to cause havoc?

Removing one single right is going to be enough to stop violence?

I do not think so.

We need better laws that do not infringe on civil rights or due process of law. Either you have your rights or you do not, and are incarcerated.

I am writing this testimony in opposition of ALL THESE ANTI GUN BILLS.

I took an oath, similar to the oath you take, you all need to follow that oath.

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as to the best of my ability."

I take my promise and oath VERY SERIOUSLY, if you have any integrity left, you will OPPOSE this legislation.

Very serious VOTER

Brendon Heal

HB-2232

Submitted on: 2/4/2020 6:14:18 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Peter J Long III | Individual | Oppose | No |

Comments:

I wish to submit my RESERVATIONS to this proposal as it would leave many with the inability to protect themselves from crime. Obviously, I do not advocate across the board access to firearms by those who have been deemed severely diminished. I have concern, though, that many people who had difficulties as a minor would be prevented from self preservation with the use of a firearm. The language used for this bill cites "behavioral", "emotional", as well as "mental" disorders....as a minor.

I just have a hard time denying a person who had a difficult time growing up the ability to protect themselves with a gun.

HB-2232

Submitted on: 2/4/2020 10:14:11 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------------|---------------------|---------------------------|---------------------------|
| Andrew Namiki Roberts | Individual | Oppose | No |

Comments:

I am in Opposition of HB2232

HB-2232

Submitted on: 2/4/2020 11:36:02 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Benel Piros | Individual | Oppose | No |

Comments:

HB-2232

Submitted on: 2/5/2020 6:50:49 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kainoa Kaku | Individual | Oppose | Yes |

Comments:

Vague, poorly written and redundant. A mental health records release is already included in a firearms permit application and Juvenile records are sealed.

HB-2232

Submitted on: 2/5/2020 8:00:15 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| steven a kumasaka | Individual | Oppose | Yes |

Comments:

contents of this bill already covered in current law

medical information covered by HIPAA

juvenile judicial records sealed under most circumstances

HB-2232

Submitted on: 2/5/2020 10:00:15 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dara Carlin, M.A. | Individual | Comments | No |

Comments:

There should be a formal process for face-to-face evaluation and clearance by a qualified mental health practitioner including a historical document review BEFORE any and every firearm purchase.

HB-2232

Submitted on: 2/5/2020 10:30:03 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Ellen Godbey Carson | Individual | Support | No |

Comments:

I support this bill to help safeguard our community from gun ownership by persons whose mental health history indicates a significant risk of danger from access to firearms. The bill still preserves the right of persons with such a history to show that they are no longer adversely affected by the behavioral, emotional or mental disorder, and/or that they are no longer deemed a danger to themselves or others. I believe this strikes an appropriate balance in safeguarding the rights of the individual and the community's interest in safety from gun violence.

HB-2232

Submitted on: 2/5/2020 11:49:32 AM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Harvey Gerwig | Individual | Oppose | Yes |

Comments:

HB 2232: MENTAL HEALTH EVALUATION FOR FIREARMS PERMITS:

I STRONGLY OPPOSE THIS MEASURE:

This is an unneeded **redundant** measure.

The police already do a search of the State Health Department health records EVERY time an application for a firearms permit is presented.

The police send a mental health information request to the personal physicians of all firearms applicants EVERY time an application for a permit it filed.

There is no need or purpose for this measure.

Please defer this measure.

Thank you,

Harvey Gerwig

HB-2232

Submitted on: 2/5/2020 12:09:34 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Carol Thomas | Individual | Oppose | No |

Comments:

HB-2232

Submitted on: 2/5/2020 12:57:07 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mark Masuda | Individual | Oppose | No |

Comments:

This bill stigmatizes people who seek mental health treatment for non dangerous mental health issues. People will be disqualified for seeing a psychologist for bed wetting as a child and seeing a therapist for stuttering.



The Judiciary, State of Hawai'i

Testimony to the House Committee on Public Safety, Veterans & Military Affairs

Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Testimony to the House Committee on Judiciary

Representative Chris Lee, Chair
Representative Joy A San Buenaventura, Vice Chair

Thursday, February 6, 2020 at 2:15 p.m.
State Capitol, Conference Room 325

by
Christine E. Kuriyama
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2232, Relating to Firearms.

Purpose: Prohibits certain individuals who, as a minor, were diagnosed with behavioral, emotional, or mental disorders or adjudicated by the family court to have committed a certain number of crimes of violence from owning firearms unless the person has been medically documented to be no longer either adversely affected by the behavioral, emotional, or mental disorder or deemed a danger to themselves or others. Requires records of these diagnoses or adjudications to be made available to law enforcement officials.

Judiciary's Position:

The Judiciary takes no position on this bill; however, it does have practical and possible funding concerns based upon the following:

1. With regard to the proposed amendment in (g)(1) of § 134-7, there are concerns that such reports and/or evaluations are confidential and obviously contain highly sensitive and personal information of a child. Also, family court does not require a psychiatric evaluation as a matter of course.



House Bill No. 2232, Relating to Firearms
House Committee on Public Safety, Veterans & Military Affairs
House Committee on Judiciary
Thursday, February 6, 2020 at 2:15 p.m.
Page 2

2. Further, generally after a child reaches the age of majority, and depending on the type of case/cases, the child's records are purged. This bill will likely cause cost increases to maintain these files because it would appear that the files would need to be maintained until the death of the affected person. The foundational purpose of allowing interfacing confidential family court information with the outside agencies, including the police departments, was to further the rehabilitation of juveniles. Besides the cost factor, the spectre of keeping this information open indefinitely may cause unintended effects on cost as well as the other operational issues.
3. The requirements contained in § 571-84 (b)(2) similarly raise the same confidentiality/privacy concerns and it is not clear whether "law enforcement" would want or need this information.
4. With regard to subsection (j), the foregoing concerns also are implicated.
5. Finally, the amendments contained in this bill may be unnecessary due to the fact that "law enforcement" have access to the Juvenile Justice Information System.

Thank you for the opportunity to provide testimony on this matter.

HB-2232

Submitted on: 2/5/2020 5:15:48 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Tish Rothwell | Individual | Oppose | No |

Comments:

LATE

HB-2232

Submitted on: 2/5/2020 8:14:05 PM

Testimony for PVM on 2/6/2020 2:15:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------|---------------------------|---------------------------|
| Bill Richter | Lessons in Firearms Education | Oppose | No |

Comments:

Re: HB2232

To whom it may concern:

This bill is poorly worded and would allow the indiscretions of youth to chill the exercise of a core, fundamental Constitutional right as an adult. Juvenile criminal records are sealed for a reason: to prevent mistakes as youths from adversely affecting otherwise law-abiding adults in the future.

Please oppose this bill.

Thank you.

Bill Richter, President

Lessons in Firearms Education