

S.B. NO. 2795

JAN 23 2014

A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

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

13 Under the NICS Improvement Amendments Act of 2007, Pub. L.
14 110-180 (18 U.S.C. § 922(d)(4) and (g)(4)), "persons who have
15 been adjudicated as mental defectives or have been committed to
16 a mental institution" are prohibited from possessing firearms or
17 ammunition. That prohibition is extended to Hawaii law pursuant
18 to section 134-7(a), Hawaii Revised Statutes, which provides:

1 "No person who . . . is a person prohibited from possessing
2 firearms or ammunition under federal law shall own, possess, or
3 control any firearm or ammunition therefor."

4 Hawaii, however, does not submit involuntary civil
5 commitment information to NICS. Persons who have been
6 involuntarily civilly committed have been found by a court to be
7 mentally ill, and to be an imminent danger to themselves or
8 others. Pursuant to our State's confidentiality law on mental
9 health information and records, the State cannot submit civil
10 commitment information to NICS, nor share it with law
11 enforcement agencies responsible for granting firearm permits
12 and registering firearms. This Act would amend sections 334-5
13 and 334-60.5, Hawaii Revised Statutes, to require the courts to
14 forward information about involuntary civil commitment orders to
15 the Hawaii criminal justice data center, which in turn will
16 forward the information to the Federal Bureau of Investigation
17 for inclusion in the NICS database. It will also require the
18 Hawaii criminal justice data center to maintain the information
19 for disclosure to law enforcement for the purpose of firearms
20 permitting and registration.

21 This Act also addresses a provision of the NICS Improvement
22 Amendments Act of 2007 to implement a "relief from disabilities
23 program." It creates a relief program that would allow someone,

1 who is prohibited under federal law from possessing a firearm
2 because the person was adjudicated a "mental defective" or
3 involuntarily committed to a psychiatric institution, to obtain
4 relief from that federal prohibitor once the person's mental
5 health issues have been addressed and the person is no longer a
6 danger to the public. The person could petition the court and
7 obtain relief by proving to the court that the person will not
8 be likely to act in a manner dangerous to public safety and that
9 the granting of relief would not be contrary to the public
10 interest. With the implementation of a relief program,
11 Hawaii would be eligible for federal funding. There are now
12 twenty-three states, with relief programs, that have qualified
13 for over \$50,000,000 in federal fiscal years 2009, 2010, 2011,
14 and 2012 to assist them in ensuring that appropriate information
15 is being properly reported to NICS.

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

19 "§134- Relief from federal firearms mental health
20 prohibitor. (a) Any person who is prohibited from shipping,
21 transporting, possessing, or receiving any firearm or
22 ammunition, pursuant to Title 18 United States Code section
23 922(d)(4) or (g)(4), having been adjudicated as a mental

1 defective or having been committed to a mental institution under
2 the laws of this State, may petition the circuit court in the
3 circuit where the adjudication or commitment was made, in a
4 civil proceeding, for relief from the federal firearm
5 prohibition based on the adjudication or commitment. The
6 attorney general shall represent the State; provided that the
7 attorney general, with the prosecuting agency's consent, may
8 designate the prosecuting attorney for the county in which the
9 petitioner seeks relief to represent the State.

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

11 (1) The circumstances regarding the adjudication or
12 commitment from which relief is sought, including but
13 not limited to the court files of the adjudication or
14 commitment;

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

17 (3) The petitioner's reputation in the community,
18 developed at a minimum through character witness
19 statements, testimony, or other character evidence;
20 and

21 (4) Changes in the petitioner's condition or circumstances
22 since the disqualifying events relevant to the relief
23 sought, including medical documentation that the

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1 petitioner is no longer adversely affected by the
2 condition that resulted in the petitioner's
3 adjudication or commitment and not likely to act in a
4 manner dangerous to public safety.

5 (c) The court shall grant the petition for relief if the
6 petitioner proves, by clear and convincing evidence, that the
7 petitioner will not be likely to act in a manner dangerous to
8 public safety and that the granting of the relief would not be
9 contrary to the public interest. The court shall make written
10 findings of facts and conclusions of law on the issues before it
11 and issue a final order.

12 (d) When a court issues an order granting or denying a
13 petition for relief, the court shall forward this information to
14 the Hawaii criminal justice data center, which in turn shall
15 forward this information to the Federal Bureau of Investigation,
16 or its successor agency, for inclusion in the National Instant
17 Criminal Background Check System database. The information
18 shall also be maintained by the Hawaii criminal justice data
19 center for disclosure to and use by law enforcement officials
20 for the purpose of firearms permitting or registration pursuant
21 to chapter 134.

22 (e) A person may file a petition for relief under this
23 section no sooner than two years after the adjudication or

1 commitment from which the relief is sought, and no more
2 frequently than once every three years thereafter.

3 (f) For purposes of this section, the terms "adjudicated
4 as a mental defective", "committed to a mental institution", and
5 "mental institution" shall be construed in accordance with Title
6 18 United States Code section 922, Title 27 Code of Federal
7 Regulations section 478.11, and judicial interpretations of
8 those provisions.

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

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

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

18 **"§334-5 Confidentiality of records.** All certificates,
19 applications, records, and reports made for the purposes of this
20 chapter and directly or indirectly identifying a person subject
21 hereto shall be kept confidential and shall not be disclosed by
22 any person except so far as:

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- 1 (1) The person identified, or the person's legal guardian,
2 consents;
- 3 (2) Disclosure may be deemed necessary by the director of
4 health or by the administrator of a private
5 psychiatric or special treatment facility to carry out
6 this chapter;
- 7 (3) A court may direct upon its determination that
8 disclosure is necessary for the conduct of proceedings
9 before it and that failure to make the disclosure
10 would be contrary to the public interest;
- 11 (4) Disclosure may be deemed necessary under the federal
12 Protection and Advocacy for Mentally Ill Individuals
13 Act of 1986, Public Law 99-319, to protect and
14 advocate the rights of persons with mental illness who
15 reside in facilities providing treatment or care;
- 16 (5) Disclosure of a person's treatment summary from a
17 previous five-year period from one health care
18 provider to another may be deemed necessary for the
19 purpose of continued care and treatment of the person,
20 or for health care operations; provided that the
21 health care provider seeking disclosure makes
22 reasonable efforts to obtain advance consent from the
23 person; [~~ex~~]

1 (6) Disclosures are made between the person's health care
2 provider and payor to obtain reimbursement for
3 services rendered to the person; provided that
4 disclosure shall be made only if the provider informs
5 the person that a reimbursement claim will be made to
6 the person's payor, the person is afforded an
7 opportunity to pay the reimbursement directly, and the
8 person does not pay[-]; or

9 (7) Disclosures made by the court, or the Hawaii criminal
10 justice data center, of involuntary civil commitments
11 issued pursuant to section 334-60.5 for the purpose of
12 firearms permitting or registration pursuant to
13 chapter 134.

14 Nothing in this section shall preclude the application of more
15 restrictive rules of confidentiality set forth for records
16 covered by Title 42, Part 2, Code of Federal Regulations,
17 relating to the confidentiality of alcohol and drug abuse
18 patient records. For the purposes of this section, "facilities"
19 shall include but not be limited to hospitals, nursing homes,
20 community facilities for mentally ill individuals, boarding
21 homes, and care homes.

22 Nothing in this section shall preclude disclosure, upon
23 proper inquiry, of any information relating to a particular

1 patient and not clearly adverse to the interests of the patient,
2 to the patient, the patient's family, legal guardian, or
3 relatives, nor, except as provided above, affect the application
4 of any other rule or statute of confidentiality. The use of the
5 information disclosed shall be limited to the purpose for which
6 the information was furnished."

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

9 "(j) If the court finds that the criteria for involuntary
10 hospitalization under section 334-60.2(1) has been met beyond a
11 reasonable doubt and that the criteria under sections 334-
12 60.2(2) and 334-60.2(3) have been met by clear and convincing
13 evidence, the court may issue an order to any law enforcement
14 officer to deliver the subject to a facility that has agreed to
15 admit the subject as an involuntary patient, or if the subject
16 is already a patient in a psychiatric facility, authorize the
17 facility to retain the patient for treatment for a period of
18 ninety days unless sooner discharged. The court may also
19 authorize the involuntary administration of medication, where
20 the subject has an existing order for assisted community
21 treatment, issued pursuant to part VIII of this chapter,
22 relating to assisted community treatment, and in accordance with
23 the treatment prescribed by that prior order. An order of

1 commitment shall specify which of those persons served with
2 notice pursuant to section 334-60.4, together with such other
3 persons as the court may designate, shall be entitled to receive
4 any subsequent notice of intent to discharge, transfer, or
5 recommit. The court shall forward to the Hawaii criminal
6 justice data center all orders of involuntary civil commitment
7 or information from all orders of involuntary civil commitment,
8 as requested by the Hawaii criminal justice data center, which
9 in turn shall forward the information to the Federal Bureau of
10 Investigation, or its successor agency, for inclusion in the
11 National Instant Criminal Background Check System database. The
12 information shall also be maintained by the Hawaii criminal
13 justice data center for disclosure to and use by law enforcement
14 officials for the purpose of firearms permitting or registration
15 pursuant to chapter 134. This subsection shall apply to all
16 involuntary civil commitments without regard to the date of the
17 involuntary civil commitment."

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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act, upon its approval, shall take effect
4 on July 1, 2014.

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6

INTRODUCED BY: 

7

BY REQUEST

8

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.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO MENTAL HEALTH.

PURPOSE: The purpose of this bill is to allow for the information from involuntary civil commitment orders to be reported to the National Instant Criminal Background Check System (NICS), and to provide a process for judicial relief for a person federally prohibited from owning a firearm based on a finding of mental illness.

MEANS: Add a new section to chapter 134, Hawaii Revised Statutes (HRS), and amend sections 334-5 and 334-60.5(j), HRS.

JUSTIFICATION: There is a need to ensure that those who suffer from a mental illness and are found to be a danger to self or others, do not have the opportunity to possess a firearm. NICS provides the resources to sellers of firearms and law enforcement to help identify those who are prohibited from owning a firearm by federal law. NICS, however, is only as good as the information states provide. Because of our State's strict confidentiality laws, neither a firearms seller nor the police department will ever know if a person was involuntarily civilly committed to a hospital, and thus prohibited from purchasing a firearm. This bill would fix that problem by allowing this information to be shared with NICS.

This bill will also establish a process for judicial relief from the federal prohibition. It allow persons who were previously prohibited from owning a firearm due to mental illness the opportunity for relief from the federal prohibitor after

proving to a judge that they have sufficiently recovered from their mental illness and that they no longer pose a danger to self or others.

Impact on the public: Possible increase in safety from firearm violence.

Impact on the department and other agencies: Positive because there are federal moneys available to help ensure that this information is being properly reported to NICS.

The NICS Improvement Amendments Act provides a financial 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 systems and identification technologies for the submission of records to NICS. Hawaii currently does not have such a program and is therefore not eligible for the funding, which was over \$50,000,000 in federal fiscal years 2009, 2010, 2011, and 2012.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	The Judiciary; county police departments
EFFECTIVE DATE:	July 1, 2014.