
A BILL FOR AN ACT

RELATING TO GUARDIANSHIP.

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 an area that
11 Hawaii is currently not reporting and closes the gap in being
12 compliant with NICS reporting requirements.

13 Under the NICS Improvement Amendments Act of 2007, Pub. L.
14 110-180 (18 U.S.C. 922(d)(4) and (g)(4)), a person "who has been
15 adjudicated as a mental defective or has been committed to any
16 mental institution" may not possess firearms or ammunition.

17 This prohibited category includes those who have been
18 adjudicated as not guilty by reason of insanity, determined to



1 be incompetent to stand trial, involuntarily committed to a
2 mental institution, or placed in legal guardianship status as an
3 adult due to mental incapacitation.

4 Hawaii currently does not submit information on those who
5 have been placed in legal guardianship status to NICS, nor does
6 it share the information with local law enforcement agencies
7 responsible for granting firearm permits and registering
8 firearms. This Act amends section 560:5-311, Hawaii Revised
9 Statutes, to require the courts to forward information about
10 adult guardianship appointment orders to the Hawaii criminal
11 justice data center, which in turn will forward the information
12 to the Federal Bureau of Investigation for inclusion in the NICS
13 database. It also requires the Hawaii criminal justice data
14 center to maintain the information for disclosure to law
15 enforcement for the purpose of firearms permitting and
16 registration.

17 SECTION 2. Section 560:5-311, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§560:5-311 Findings; order of appointment. (a) The
20 court may:



1 (1) Appoint a limited or unlimited guardian for a
2 respondent only if it finds by clear and convincing
3 evidence that:

4 (A) The respondent is an incapacitated person; and

5 (B) The respondent's identified needs cannot be met
6 by less restrictive means, including use of
7 appropriate and reasonably available
8 technological assistance; or

9 (2) With appropriate findings, treat the petition as one
10 for a protective order under section 560:5-401, enter
11 any other appropriate order, or dismiss the
12 proceeding.

13 (b) The court, whenever feasible, shall grant to a
14 guardian only those powers necessitated by the ward's
15 limitations and demonstrated needs and make appointive and other
16 orders that will encourage the development of the ward's maximum
17 self-reliance and independence.

18 (c) Within fourteen days after an appointment, a guardian
19 shall send or deliver to the ward and to all other persons given
20 notice of the hearing on the petition a copy of the order of
21 appointment, together with a notice of the right to request



1 termination or modification; provided that, for good cause
2 shown, the court may extend time for the order and notice to be
3 sent or delivered to the ward, or otherwise modify or waive that
4 requirement.

5 (d) The court shall forward to the Hawaii criminal justice
6 data center all orders of appointment or information from all
7 orders of appointment as requested by the Hawaii criminal
8 justice data center, which in turn shall forward the information
9 to the Federal Bureau of Investigation, or its successor agency,
10 for inclusion in the National Instant Criminal Background Check
11 System database. The orders of appointment or information shall
12 also be maintained by the Hawaii criminal justice data center
13 for disclosure to and use by law enforcement officials for the
14 purpose of firearms permitting or registration pursuant to
15 chapter 134. This subsection shall apply to all orders
16 appointing a guardian of an incapacitated person without regard
17 to the date of the appointment."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on January 1, 2017.



Report Title:

Guardianship; Gun Control

Description:

Requires the courts to provide information relating to adult guardianships to the Hawaii criminal justice data center to disclose to the Federal Bureau of Investigation National Instant Criminal Background Check System database for gun control purposes. Requires the Hawaii criminal justice data center to maintain the adult guardianship orders of appointment or information for disclosure to and use by law enforcement officials for firearm permitting or registration purposes. Takes effect on 1/1/2017. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

